JOINT COMMENTS OF
AIRLINES FOR AMERICA,
THE INTERNATIONAL AIR TRANSPORT ASSOCIATION,
THE REGIONAL AIRLINE ASSOCIATION, AND
THE NATIONAL AIR CARRIER ASSOCIATION

Docket CDC-2020-0013

ATTACHMENTS PART 1

JOINT COMMENTS OF
AIRLINES FOR AMERICA,
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THE REGIONAL AIRLINE ASSOCIATION, AND
THE NATIONAL AIR CARRIER ASSOCIATION

Docket CDC-2020-0013

ATTACHMENT 1

모바일 자가진단 앱 안내

모바일 자가진단 앱

Self Diagnosis Mobile App Instructions

自我诊断手机APP 使用指南

モバイル自己診断アプリのご利用方法

모바일 자가진단 앱 안내

중국 또는 일본에서 입국하신 분들은 "모바일 자가진단 앱"을 의무적으로 설치하여 한국 체류 14일간 건강상태를 매일 입력하셔야 합니다.
아래 파일을 클릭하여 설치하시기 바랍니다.

Google play App

안드로이드

자가진단 앱 (안드로이드) 설치방법 [동영상 보기]

IOS

Self Diagnosis Mobile App Instructions

Travelers from China or Japan should install the Self Diagnosis Mobile App and record their daily health status on the app for 14 days after arrival in Korea. Please click the file below

Google play App

Android

Self-diagnosis app (Android) installation method [Viewing Video]

IOS

自我诊断手机APP 使用指南

从中国或日本入境者有义务安装"自我诊断手机APP"， 自入境之日起14天内，每天通过手机APP输入本人健康状态。请点击设置以下文件。

Google play App

安卓系统

自我诊断应用 (Android) 如何安装 [观看视频]

IOS

モバイル自己診断アプリのご利用方法

中国や日本から入国された方は、「モバイル自己診断アプリ」を義務的に設置して、韓国滞在14日間の健康状態を毎日入力する必要があります。以下のファイルをクリックしてインストールしてください。

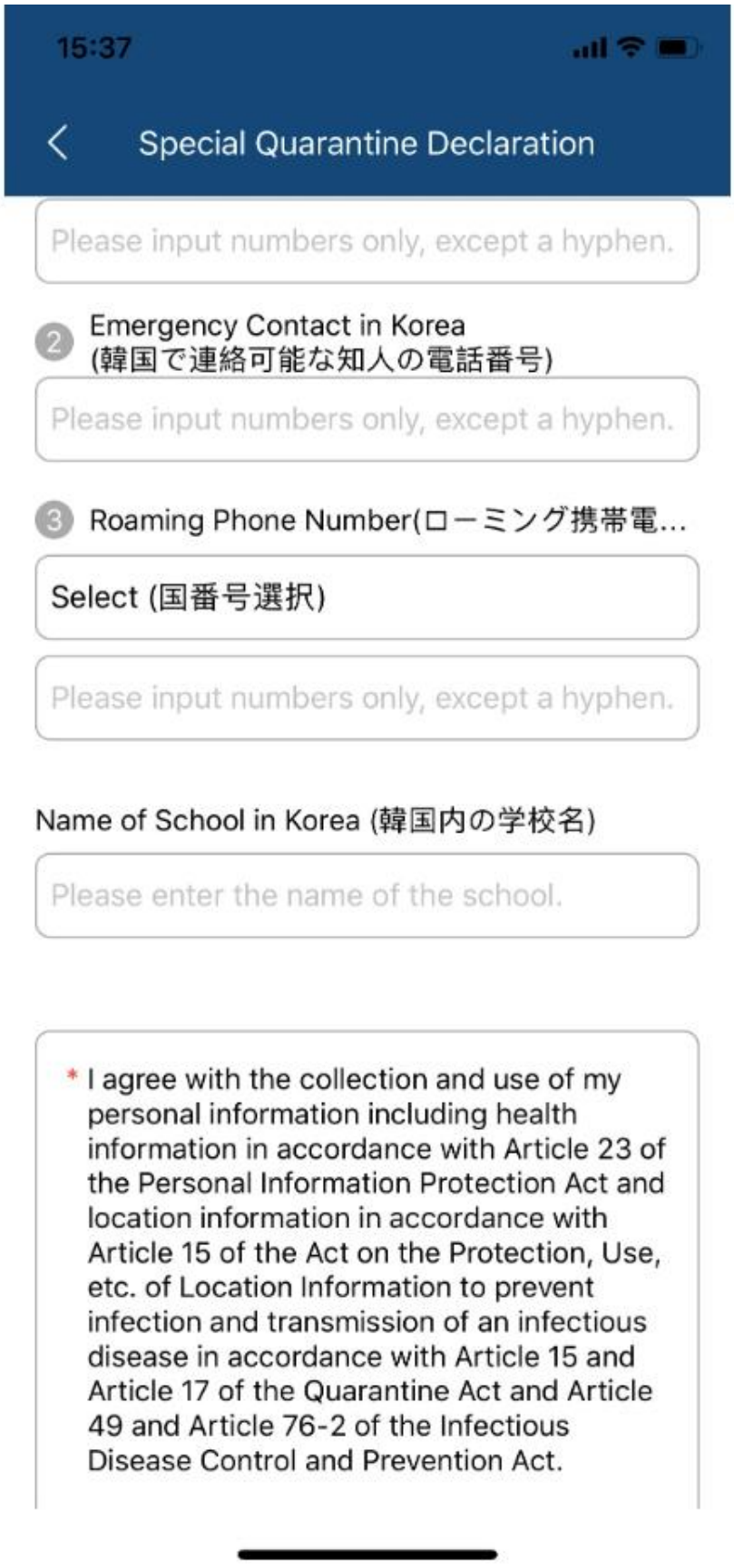
Google play App

Android

IOS


15:35
언어를 선택하세요.
请选择语言。
Please select a language.
한국어
中文
ENGLISH
(日本)


15:36
Special Quarantine Declaration
* Passport No. (パスポートばんごう)
984458855
* Nationality (国籍)
KOREA (韓国)
CHINA (中国)
JAPAN (日本)
OTHER (その他)
USA
* Please select the Region you have visited or actually lived in the last 14 days. (最近14日以内に訪問したり、実際の居住地域を選択してください。)
Select (国番号選択)
* Phone Number (携帯電話番号)
Please enter at least one number. (以下の項目のうち、最小1つの番号を入力してください。)
1
Phone Number in Korea (韓国で使用する韓国の電話番号)


15:37
Special Quarantine Declaration
Please input numbers only, except a hyphen.
2 Emergency Contact in Korea
(韓国で連絡可能な知人の電話番号)
Please input numbers only, except a hyphen.
3 Roaming Phone Number(ローミング携帯電...
Select (国番号選択)
Please input numbers only, except a hyphen.
Name of School in Korea (韓国内の学校名)
Please enter the name of the school.
* I agree with the collection and use of my personal information including health information in accordance with Article 23 of the Personal Information Protection Act and location information in accordance with Article 15 of the Act on the Protection, Use, etc. of Location Information to prevent infection and transmission of an infectious disease in accordance with Article 15 and Article 17 of the Quarantine Act and Article 49 and Article 76-2 of the Infectious Disease Control and Prevention Act.


15:37
Special Quarantine Declaration
Name of School in Korea (韓国内の学校名)
Please enter the name of the school.
* I agree with the collection and use of my personal information including health information in accordance with Article 23 of the Personal Information Protection Act and location information in accordance with Article 15 of the Act on the Protection, Use, etc. of Location Information to prevent infection and transmission of an infectious disease in accordance with Article 15 and Article 17 of the Quarantine Act and Article 49 and Article 76-2 of the Infectious Disease Control and Prevention Act.
[検疫法]第15条、第17条及び[感染病予防法]第49条、第76条の2による感染病の予防及び感染電波の遮断のため、[個人情報保護法第23条の健康情報及び[位置情報の保護および利用などに関する法律第15条の位置情報が含まれた個人情報の提供及び活用に同意します。
More (詳細を見る)
Agree
DONE (完了)

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Docket CDC-2020-0013

ATTACHMENT 2

Technology

China launches coronavirus 'close contact detector' app

11 February 2020

Coronavirus outbreak

China has launched an app that allows people to check whether they have been at risk of catching the coronavirus.

The 'close contact detector' tells users if they have been near a person who has been confirmed or suspected of having the virus.

People identified as being at risk are advised to stay at home and inform local health authorities.

The technology shines a light on the Chinese government's close surveillance of its population.

To make an inquiry users scan a Quick Response (QR) code on their smartphones using apps like the payment service Alipay or social media platform WeChat.

Once the new app is registered with a phone number, users are asked to enter their name and ID number. Every registered phone number can then be used to check the status of up to three ID numbers.

- **Bosses 'removed' as virus death toll hits 1,000**
- **Coronavirus: Nissan to shut factory in Japan**
- **Why much of 'the world's factory' remains closed**

The app was jointly developed by government departments and the China Electronics Technology Group Corporation and supported by data from health and transport authorities, according to the state-run news agency Xinhua.

It is widely known that the Chinese government conducts high levels of surveillance on its citizens but experts in the field suggest, in this case at least, it will not be seen as controversial within the country.

Hong Kong-based technology lawyer at the law firm DLA Piper Carolyn Bigg told the BBC: "In China, and across Asia, data is not seen as something to be locked down, it's something that can be used. Provided it's done in a transparent way, with consent where needed."

"From a Chinese perspective this is a really useful service for people... It's a really powerful tool that really shows the power of data being used for good," she added.

The Chinese government defines 'close contact' as coming near to, with no effective protection, confirmed, suspected or mild cases of the coronavirus while the person was ill, even if they were showing no symptoms at the time.

'Close contact' covers:

- People who work closely together, share a classroom, or live in the same home
- Medical staff, family members or other people who have been in close contact with patients and their caregivers
- Passengers and crew who have been on planes, trains and other forms of transport with an infected person

For example, all air passengers within three rows of an infected person, as well as cabin staff, are seen as being in close contact, while other passengers would be recorded as having general contact.

When it comes to air-conditioned trains, all passengers and crew members in the same carriage are regarded as being in close contact.

View comments

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10 February 2020

Technology

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Docket CDC-2020-0013

ATTACHMENT 3

Homeland Security

Department of Homeland Security Outlines New Process for Americans Returning from Certain European Countries, China, and Iran

U.S. Department of Homeland Security sent this bulletin at 03/13/2020 04:01 PM EDT

U.S. DEPARTMENT OF HOMELAND SECURITY

Office of Public

Department of Homeland Security Outlines New Process for Americans Returning from Certain European Countries, China, and Iran

WASHINGTON – In order to help prevent the spread of travel-related cases of coronavirus in the United States, today the Department of Homeland Security (DHS) Acting Secretary Chad F. Wolf issued a Notice of Arrival Restrictions outlining the process for American citizens, legal permanent residents, and their immediate families who are returning home after recently visiting certain European countries (listed below), China, and Iran.

Effective for flights taking off at 11:59 PM EDT on Friday, March 13th, Americans returning from all restricted countries will now be required to travel through the following 13 airports:

- Boston-Logan International Airport (BOS), Massachusetts
- Chicago O'Hare International Airport (ORD), Illinois
- Dallas/Fort Worth International Airport (DFW), Texas
- Detroit Metropolitan Airport (DTW), Michigan
- Daniel K. Inouye International Airport (HNL), Hawaii
- Hartsfield-Jackson Atlanta International Airport (ATL), Georgia
- John F. Kennedy International Airport (JFK), New York
- Los Angeles International Airport, (LAX), California
- Miami International Airport (MIA), Florida
- Newark Liberty International Airport (EWR), New Jersey
- San Francisco International Airport (SFO), California
- Seattle-Tacoma International Airport (SEA), Washington
- Washington-Dulles International Airport (IAD), Virginia

Upon arrival, travelers will proceed to standard customs processing. They will then continue to enhanced entry screening where the passenger will be asked about their medical history, current condition, and asked for contact information for local health authorities. Passengers will then be given written guidance about COVID-19 and directed to proceed to their final destination, and immediately home-quarantine in accordance with CDC best practices.

"While the overall risk of serious infection from the coronavirus to the general public

remains low at this time, the Trump administration is taking these aggressive measures to keep the risk low, requiring all Americans returning from affected areas in Europe to be funneled through 13 airports for screening upon their return to the U.S.," said Acting Secretary Wolf. "To minimize disruptions to travelers, TSA, CBP, and air carriers are working to identify qualifying passengers before their scheduled flights. These passengers will be rerouted to one of the 13 airports by their airline at no cost to them."

Wolf continued: "I understand this new process will be disruptive to some travelers, however this action is needed to protect the general public from further exposure and spread of the coronavirus. Once back in the U.S. it is imperative that individuals honor self-quarantine directives to help protect their loved-ones and communities."

President Trump determined that the potential for widespread transmission of the coronavirus by infected individuals seeking to enter the United States threatens the security of the homeland. Therefore, the Department is taking action in furtherance of the public health interests advanced by the March 11th presidential proclamation which suspends entry to nearly all foreign nationals who have been in certain European countries, China and Iran at any point during the 14 days prior to their scheduled travel to the U.S.

These European countries, known as the Schengen Area, include: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland. This Presidential Proclamation does not apply to U.S. citizens, legal permanent residents, nor their family members under the age of 21, and other individuals who are identified in the proclamation. Nor does it apply to cargo and economic shipping.

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Docket CDC-2020-0013

ATTACHMENT 4

Doc 9944

Guidelines on Passenger Name Record (PNR) Data

Approved by the Secretary General
and published under his authority

First Edition — 2010

International Civil Aviation Organization

Published in separate English, Arabic, Chinese, French, Russian
and Spanish editions by the
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For ordering information and for a complete listing of sales agents
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Doc 9944, *Guidelines on Passenger Name Record (PNR) Data*
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AMENDMENTS

Amendments are announced in the supplements to the *Catalogue of ICAO Publications;* the Catalogue and its supplements are available on the ICAO website at www.icao.int. The space below is provided to keep a record of such amendments.

RECORD OF AMENDMENTS AND CORRIGENDA

AMENDMENTS		
No.	Date	Entered by

CORRIGENDA		
No.	Date	Entered by

FOREWORD

Note.— Throughout these guidelines, the use of the male gender should be understood to include male and female persons.

1. In the present climate of intensified security controls, it is recognized that modern facilitation tools such as machine readable passports (MRPs) and advance passenger information (API) systems enhance overall the security of international civil aviation. In recent years, the level of interest in using API as a security measure has increased. Some States have deemed it necessary, in order to combat terrorism and to protect their borders, to go beyond the API requirements and to require additional data relating to passengers to be stored in the reservation and other such systems of aircraft operators.

2. This issue of collection, by States, of Passenger Name Record (PNR) data was first raised in ICAO at the Twelfth Session of the Facilitation Division held in Cairo, Egypt, from 22 March to 1 April 2004. The Division adopted Recommendation B/5 that reads as follows:

> It is recommended that ICAO develop guidance material for those States that may require access to Passenger Name Record (PNR) data to supplement identification data received through an API system, including guidelines for distribution, use and storage of data and a composite list of data elements [that] may be transferred between the operator and the receiving State.

3. In June 2004, pursuant to this recommendation, the Air Transport Committee requested the Secretary General to establish a Secretariat study group to develop guidelines on PNR data transfer. The Council, in endorsing Recommendation B/5, directed that these guidelines were to be submitted early in 2005.

4. In March 2005, the ICAO Council adopted the following Recommended Practice for inclusion in Annex 9 to the Chicago Convention — *Facilitation*:

> **Recommended Practice.—** *Contracting States requiring Passenger Name Record (PNR) access should conform their data requirements and their handling of such data to guidelines developed by ICAO.*

5. In April 2006, these guidelines were published in Circular 309.

6. In 2008, following a recommendation made by the Fifth meeting of the Facilitation Panel (FALP), a working group was established to revise, as appropriate, Circular 309 in light of recent global developments on the issue of PNR data transfer. The working group presented its results to the Sixth meeting of the FALP, held in Montréal in May 2010. The Panel agreed to the final version of the revised guidelines as contained in this manual.

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TABLE OF CONTENTS

GLOSSARY OF TERMS

Advance passenger information (API). A unilateral system whereby required data elements are collected and transmitted to border control agencies prior to flight arrival, and made available on the primary line at the port of entry.

Note.— For more information on API, please see the WCO/IATA/ICAO Guidelines on Advance Passenger Information *(June 2010).*

Aircraft operator. A person, organization or enterprise engaged in or offering to engage in an aircraft operation.

Authorized agent. A person who represents an operator and who is authorized by or on behalf of such operator to act on formalities connected with the entry and clearance of the operator's aircraft, crew, passengers, cargo, mail, baggage or stores and includes, where national law permits, a third party authorized to handle cargo on the aircraft.

Booking aircraft operator. An aircraft operator or his authorized agent with whom the passenger makes his original reservation(s) or with whom additional reservations are made after commencement of the journey.

Computer reservation system (CRS). Electronic (computer) repository of information about a passenger's travel itinerary, for example, passenger details, itinerary, ticket information, and address.

Data processing. For the purpose of these guidelines, includes any operation or set of operations performed on PNR data, such as collection, recording, organization, storage, adaptation or alteration, calling-up, retrieval, consultation, use, transfer, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

Departure control system (DCS). The system used to check passengers onto flights. The DCS contains check-in information such as seat number and baggage information.

Participating aircraft operator. Any aircraft operator on whose aircraft the booking aircraft operator has requested space, on one or more of its flights, to be held for a passenger.

PNR data transfer. The transfer of PNR data, from an aircraft operator's system(s), to a State requiring such data or access by the State to PNR data from such system(s).

LIST OF ACRONYMS

API(S)	Advance passenger information (system)
ARNK	Alternate routing unknown
ATFQ	Automatic fare quote
CRS	Computer reservation system
DCS	Departure control system
FOP	Form of payment
IATA	International Air Transport Association
OSI	Other service information
PNR	Passenger Name Record
PTA	Prepaid ticket advice
SSI	Special service information
SSR	Special service request
WCO	World Customs Organization

Chapter 1

INTRODUCTION

1.1 Under Article 13 of the Convention on International Civil Aviation (Chicago Convention, 1944), the laws and regulations of a Contracting State as to the admission to or departure from its territory of passengers, crew or cargo of aircraft, such as regulations relating to entry, clearance, immigration, passports, customs, and quarantine shall be complied with, by or on behalf of such passengers, crew or cargo upon entrance into or departure from, or while within the territory of that State.

1.2 Consequently, a State has discretion over the information it requires relating to persons wishing to gain entry into its territory.

1.3 A State may require aircraft operators operating flights to, from or in transit through airports within its territory to provide its public authorities, upon request, with information on passengers, such as Passenger Name Record data.

1.4 In this regard, the General Principles set out in Chapter 1 of Annex 9 — *Facilitation* require Contracting States to take necessary measures to ensure that:

a) the time required for the accomplishment of border controls in respect of persons is kept to the minimum;

b) minimum inconvenience is caused by the application of administrative and control requirements;

c) exchange of relevant information between Contracting States, operators and airports is fostered and promoted to the greatest extent possible; and

d) optimal levels of security, and compliance with the law, are attained.

1.5 The Principles also require Contracting States to develop effective information technology to increase the efficiency and effectiveness of their procedures at airports.

1.6 Finally, the Principles specify that the provisions of Annex 9 shall not preclude the application of national legislation with regard to aviation security measures or other necessary controls.

———————————

Chapter 2

PASSENGER NAME RECORD (PNR) DATA

2.1 WHAT IS A PASSENGER NAME RECORD (PNR)?

2.1.1 A Passenger Name Record (PNR), in the air transport industry, is the generic name given to records created by aircraft operators or their authorized agents for each journey booked by or on behalf of any passenger. The data are used by operators for their own commercial and operational purposes in providing air transportation services. Industry standards related to PNR creation are detailed in IATA's *Passenger Services Conference Resolutions Manual* and in the *ATA/IATA Reservations Interline Message Procedures — Passenger (AIRIMP)*.

2.1.2 A PNR is built up from data that have been supplied by or on behalf of the passenger concerning all the flight segments of a journey. This data may be added to by the operator or his authorized agent, for example, changes to requested seating, special meals and additional services requested.

2.1.3 PNR data are captured in many ways. Reservations may be created by international sales organizations (global distribution systems (GDS) or computer reservation systems (CRS)) with pertinent details of the PNR then transmitted to the operating carrier(s). Reservations may be accepted directly by the aircraft operator and the complete PNR stored in the operator's automated reservations systems. Some operators may also store subsets of the PNR data in their own automated departure control systems (DCS), or provide similar data subsets to contracted ground handling service providers, to support airport check-in functions. In each case, operators (or their authorized agents) will have access to and be able to amend only those data that have been provided to their system(s). Some DCS systems are programmed such that details emerging from check-in (i.e. seat and/or baggage information) can be overlaid into the existing PNR for each passenger. However, that capability is limited — covering less than 50 per cent of operating systems today.

2.1.4 Aircraft operators specializing in charter air services often do not hold PNR data. In some cases, for example, where they use a DCS, they will have a limited PNR record but only once the flight has closed.

2.1.5 Supplemental or "requested service" information may be included in the PNR. This type of information is also defined in the IATA documents mentioned in 2.1.1 and may concern special dietary and medical requirements, "unaccompanied minor" information, requests for assistance, and so on.

2.1.6 Some information, such as the internal dialogue or communication between airline staff and reservation agents, may be stored in the PNR, in particular in the "General remarks" field. The remarks may include miscellaneous comments and shorthand.

2.1.7 PNRs may include many of the separate data elements described in the list of possible elements contained in Appendix 1 to these guidelines. However, in practice and as described in 2.1.3 above, aircraft operators capture only a limited number of data as key elements for the creation of a PNR. As pointed out in 2.1.3, an airline operating system may have a limited capability of incorporating data elements registered in the DCS (e.g. all check-in information, all seat information, all baggage information and "go-show" and "no-show" information) into a PNR. Accordingly, the structure of individual PNRs and the amount of data they contain will vary widely.

2.1.8 The number and nature of the fields of information in a PNR will vary depending on the reservation system used during the initial booking, or other data collection mechanism employed (e.g. the DCS), the itinerary involved and

also upon the special requirements of the passenger. The possible fields and subfields of PNR data may expand to more than sixty items, as listed in Appendix 1 to these guidelines. PNR data fields are subject to change based on operational requirements and technological developments.

2.1.9 PNRs should not contain any information that an aircraft operator does not need to facilitate a passenger's travel, e.g. racial or ethnic origin, political opinions, religious or political beliefs, trade-union membership, marital status or data relating to a person's sexual orientation. Contracting States should not require aircraft operators to collect such data in their PNRs.

2.1.10 PNRs may contain data, e.g. meal preferences and health issues as well as free text and general remarks, legitimately entered to facilitate a passenger's travel. Some of these data may be considered sensitive and require appropriate protection. It is particularly important that carriers and States protect these data. Although they can be relevant in determining the risk that a passenger might represent, such data should be taken into consideration only if concrete indications exist which require the use of such data for the purposes listed in 2.2.2 a) to d).

2.1.11 PNR data are captured into reservation systems many days or weeks in advance of a flight. This can be up to approximately a year in advance of departure. Information in reservation systems is therefore dynamic and may change continually from the time when the flight is open for booking.

2.1.12 Passenger and flight information in the DCS is, on the other hand, available only from when the flight is "open" for check-in (up to 48 hours prior to departure). Departure control information for a flight will be finalized only upon flight closure and may remain available for 12 to 24 hours after the arrival of a flight at its final destination.

2.2 WHY ARE STATES REQUIRING PNR DATA TRANSFER?

2.2.1 A number of States consider that PNR data are critically important for the threat assessment value that can be derived from the analysis of such data, particularly in relation to the fight against terrorism and serious crime. They have thus legislated or are planning to legislate for aircraft operators to provide their public authorities with PNR data. In addition, a number of States consider PNR data important for the prevention, investigation or prosecution of a terrorist offence or serious crime.

2.2.2 Identification of potentially high-risk passengers through PNR data analysis provides States and aircraft operators with a capacity to:

a) improve aviation security;

b) enhance national and border security;

c) prevent and combat terrorist acts and related crimes and other serious crimes that are transnational in nature, including organized crime, and to enforce warrants and prevent flight from custody for such crimes;

d) protect the vital interests of passengers and the general public, including health;

e) improve border control processing at airports; and

f) facilitate and safeguard legitimate passenger traffic.

2.3 WHAT IS THE PURPOSE OF THESE GUIDELINES?

2.3.1 Aircraft operators could face legal, technical and financial issues if they have to respond to multiple, unilaterally imposed or bilaterally agreed PNR data transfer requirements that differ substantially from one another.

2.3.2 The purpose of these guidelines is to establish uniform measures for PNR data transfer and the subsequent handling of these data by the States concerned, based on the principles of:

a) minimization of the cost to industry;

b) accuracy of information;

c) completeness of data;

d) protection of personal data;

e) timeliness; and

f) efficiency and efficacy of data management/risk management.

2.3.3 These guidelines also seek to assist States in designing data requirements and procedures in order to minimize technical burdens that may impair the implementation of these uniform measures. These guidelines address the issue of PNR data transfer from an operator's system to a State, and the management of these data including arrangements for storage and protection.

2.3.4 A harmonized set of guidelines for PNR data transfer should benefit requesting States and aircraft operators by assisting States to design systems and establish arrangements that are compatible with these guidelines but do not impair States' ability to enforce their laws and preserve national security and public safety.

2.3.5 If implemented uniformly, these guidelines would provide a global framework allowing:

a) all States to benefit from the value-added analysis of PNR data for shared security/safety purposes;

b) aircraft operators to benefit from one set of common requirements for PNR data transfer; and

c) all passengers to benefit from basic protection of their PNR data.

2.4 LAWS OR REGULATIONS

2.4.1 The requirement for PNR data transfer should be governed by explicit legal provisions. The reasons for requiring PNR data should be clearly expressed in the appropriate laws or regulations of the State or in explanatory material accompanying such laws or regulations, as appropriate.

2.4.2 States should ensure that their public authorities have the appropriate legal authority to process the PNR data requested from aircraft operators, in a manner that observes these guidelines. States are invited to forward the full text of such legislation to ICAO for online dissemination to other States for information. All queries arising from such legislation should be addressed to the State and not to ICAO.

2.4.3 An aircraft operator is obliged to observe the laws of both the State from which it transports passengers (State of departure) and the State to which these passengers are transported (destination State).

2.4.4 If the laws of the State of departure prevent an aircraft operator from complying with the requirements of the destination State, both States should enter into consultation, as soon as possible, to resolve this conflict of laws.

2.4.5 Pending resolution of the conflict described in 2.4.4, States should consider whether the suspension of fines and other sanctions against an aircraft operator unable to comply with their PNR requirements is appropriate given the particular circumstances of the case.

2.5 PNR DATA ELEMENTS

2.5.1 As seen in section 2.1, PNRs can contain an extensive amount of data. States should limit their requirements to the transfer of those PNR elements which are necessary and relevant for the purposes listed in section 2.2. Specific data elements that may be available from an operator's system(s) are set out in Appendix 1 to these guidelines. The principles of section 2.9 (Filtering of PNR data) should be applied, as appropriate, in this regard.

2.5.2 States should not require or hold an aircraft operator responsible for submission of PNR data that are not already collected or held in the operator's reservation or DCS. An operator should be held responsible only for data that are available in its reservation system or DCS. The specific data elements that might be available from an aircraft operator's system will also depend on the type of air transport services provided by the operator.

2.5.3 Aircraft operators may still be required to provide any captured PNR data to States requesting them, regardless of the process by which they receive them.

2.6 PNR DATA PROCESSING

2.6.1 States should require PNR data only from aircraft operators who directly operate flights that enter, depart or transit through airports situated in their territories, either as scheduled flights or as the result of an unplanned diversion to an airport situated in their territories (States should accept that in the latter case the ability to provide PNR data may be limited).

2.6.2 It is particularly important that these data be protected, and therefore a State obtaining PNR information should, as a minimum:

a) limit the use of the data to the purpose for which it collects them;

b) restrict access to such data;

c) limit the period of data storage, consistent with the purposes for which data are transferred;

d) ensure that individuals are able to request disclosure of the data that are held concerning them, consistent with 2.14.3 of these guidelines, in order to request corrections or notations, if necessary;

e) ensure that individuals have an opportunity for redress (2.14.4 refers); and

f) ensure that data transfer protocols and appropriate automated systems are in place to access or receive the data in a manner consistent with these guidelines.

2.6.3. States should not require PNR data from an aircraft operator that does not physically operate a flight to an airport situated in their territories when that aircraft operator's designator code is used to identify a flight operated by another aircraft operator as part of a marketing or code-sharing agreement.

2.7 METHODS OF PNR DATA TRANSFER

2.7.1 There are two possible methods of PNR data transfer currently available:

a) *The "pull" method.* The public authorities from the State requiring the data can reach into ("access") the aircraft operator's system and extract ("pull") a copy of the required data from its database.

b) *The "push" method.* Aircraft operators transmit ("push") the required PNR data elements into the database of the authority requesting them.

2.7.2 A State should consider the relative merits of the "push" and "pull" methods in terms of data protection and risk assessment options, as well as the economic impact of each method upon the State and upon operators for both the establishment of the systems and ongoing data transfer.

2.7.3 However, it is recommended that a State consider the adoption of the "push" method because of the operator's position as the guardian and controller of the PNR data.

2.7.4 PNR data required by a State should be transferred through a single representative agency of the requesting State (the "single window" concept).

2.8 FREQUENCY AND TIMING OF PNR DATA TRANSFER

2.8.1 When developing the technical capability to enable PNR data to be pushed, States should determine the frequency and timing of the data transfer, taking into consideration the limitations and capabilities of aircraft operators' systems.

2.8.2 The timing and frequency of data transfer should be limited to that necessary for the purposes listed in section 2.2. States should routinely be provided with data on a scheduled basis and should seek to minimize the number of times PNR data are transmitted for a particular flight.

2.8.3 Where States identify a specific threat, they may request data for a given passenger, flight or PNR on an ad-hoc basis in accordance with procedures established by those States.

2.9 FILTERING OF PNR DATA

2.9.1 The State requiring PNR data should consult with operators providing these data regarding the most efficient method(s) for the filtering of data taking into full consideration available technological solutions and applicable laws or regulations (2.4.3 also refers).

2.9.2 Appropriate mechanisms should be installed to ensure that only required PNR data elements are pushed by the aircraft operator to, or pulled by, the relevant State authorities.

2.9.3 States may decide whether the filtering will take place within the individual systems of aircraft operators or of their authorized agents or within the system of the receiving State. States may also consider whether a regional filtering system under the control of interested operators should be developed.

2.10 STORAGE OF PNR DATA

PNR data should be stored by the receiving State for no longer than is reasonably necessary for the stated purposes related to their collection by the State and for auditing or redress purposes, in accordance with its laws.

2.11 ONWARD TRANSFER

2.11.1 Appropriate safeguards for limiting the onward transfer of PNR data only to authorized public authorities should be put in place. Such safeguards should take account of agreements or undertakings entered into with the State from which the data are transferred.

2.11.2 When PNR data acquired by one State are to be transferred to another, the purposes for such onward intergovernmental transfer or sharing should be consistent with those set out in 2.2.2, and the conditions under which such a transfer will take place should be resolved during the process contemplated in 2.4.4 and 2.4.5. States should bear in mind that the onward transfer of data could expose the aircraft operator to civil liabilities.

2.12 PNR DATA PROTECTION: GENERAL PRINCIPLES

2.12.1 A State should ensure that each public authority with access to PNR data provide an appropriate level of data management and protection.

2.12.2 Where no national data protection legislation is in place, States should have procedures in place to protect a passenger's PNR data. Using these guidelines as a basis, as appropriate, States should develop data protection laws or regulations concerning PNR data transfer and data processing.

2.12.3 A reasonable balance should be achieved between the need to protect a passenger's PNR data and a State's prerogative to require disclosure of passenger information. Accordingly, States should not unduly restrict PNR data transfer by aircraft operators to relevant authorities of another State, and States should ensure that a passenger's PNR data are protected.

2.13 SECURITY AND INTEGRITY OF PNR DATA

2.13.1 States should put in place regulatory, procedural and technical measures to ensure that the processing of PNR data for the purposes identified in section 2.2 is carried out in accordance with appropriate safeguards, notably with respect to the security, authenticity, integrity and confidentiality of the PNR data. Precautions should also be taken against the misuse or abuse of the data by State authorities.

2.13.2 States should ensure that their PNR data computer systems and networks are designed to prevent aircraft operators from having access through these systems to the data or information systems of another operator.

2.13.3 To prevent the unauthorized disclosure, copying, use or modification of data provided to a State, a receiving State should restrict access to such information on a "need-to-know" basis and use recognized security mechanisms, such as passwords, encryption or other reasonable safeguards, to prevent unauthorized access to PNR data contained in its computer systems and networks.

2.13.4 A State should, pursuant to its national laws or regulations, maintain a system of database control that provides for the orderly disposal of PNR data received.

2.13.5 Under the "pull" method, PNR access systems operated by State authorities should be so designed that they do not adversely affect the normal operation or security of aircraft operators' systems. The access systems should also be designed such that operators' data cannot be modified or other actions undertaken that would threaten the integrity of operators' data or their systems (i.e. they are "read-only" systems).

2.13.6 States should ensure that an appropriate audit programme is in place to monitor the transfer, removal and destruction of PNR data from their databases. Audit system access should be limited to authorized users.

2.14 TRANSPARENCY AND PASSENGER REDRESS

2.14.1 An aircraft operator or its agent should provide adequate notice to passengers (for example at the time of booking of a flight or purchase of the ticket) that the operator might be required, by law, to provide the public authorities of a State with any or all of the passenger PNR data held by the operator in relation to a flight to, from, or in transit through an airport within the territory of the State and that the information might be passed to other authorities when necessary to satisfy the State's purpose for acquiring the information. This notice should also include the specified purpose for obtaining the information as well as appropriate guidance to passengers on how they might access their data and seek redress.

2.14.2 Model passenger information/notice forms that operators might wish to use are found in Appendix 2 to these guidelines.

2.14.3 States should provide for appropriate mechanisms, established by legislation where feasible, for passengers to request access to and consult personal information about them and request corrections or notations, if necessary.

2.14.4 Redress mechanisms should be set up to enable passengers to obtain adequate remedy for the unlawful processing of their PNR data by public authorities.

2.15 COSTS

2.15.1 States should carefully consider the cost to operators arising from the various options for obtaining PNR data. There are different cost regimes associated with "push" and "pull" approaches, and a State should therefore consult with operators to identify the most appropriate method to use in order to minimize the cost for both the State and the operators.

2.15.2 States, when requiring PNR data transfer, should take into account the issues affecting other States and the aircraft operators in their territories, especially with respect to the cost and the potential impact on existing infrastructure.

2.16 SANCTIONS AND PENALTIES

2.16.1 States should acknowledge that PNR data collected by aircraft operators cannot be verified for accuracy or completeness. Therefore, neither should action be taken against an operator nor should an operator be held legally, financially or otherwise responsible for transferring PNR data that have been collected in good faith, but which are later found to be false, misleading or otherwise incorrect.

2.16.2 When an aircraft operator has not transferred PNR data for a diverted flight, States should take the circumstances surrounding the diversion into account.

2.16.3. When penalties and sanctions are imposed for not supplying PNR data, States should impose them only on aircraft operators who directly operate flights that enter, depart or transit through airports situated in their territories.

2.17 OTHER ISSUES

States collecting PNR data shall strictly conform with the dispositions of Annex 13 to the Chicago Convention — *Aircraft Accident and Incident Investigation* on non-disclosure of records in the case of an accident or incident investigation (Chapter 5, 5.12).

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Appendix 1

PNR DATA ELEMENTS

(Paragraph 2.5.1 refers)

An operator's system(s) may include the following data elements:

Data groups or categories	*Component data elements*
PNR name details	Passenger name, family name, given name/initial, title, other names on PNR
Address details	Contact address, billing address, emergency contact, email address, mailing address, home address, intended address [in State requiring PNR data transfer]
Contact telephone number(s)	[Telephone details]
Any collected API data	Any collected API data, e.g. name on passport, date of birth, sex, nationality, passport number
Frequent flyer information	Frequent flyer account number and elite level status
PNR locator code	File locater number, booking reference and reservation tracking number
Number of passengers on PNR	[Number]
Passenger travel status	Standby information
All date information	PNR creation date, booking date, reservation date, departure date, arrival date, PNR first travel date, PNR last modification date, ticket issue date, "first intended" travel date, date of first arrival [in State requiring PNR data transfer], late booking date for flight
Split/divided PNR information	Multiple passengers on PNR, other passengers on PNR, other PNR reference, single passenger on booking
All ticketing field information	Date of ticket issue/purchase, selling class of travel, issue city, ticket number, one-way ticket, ticket issue city, automatic fare quote (ATFQ) fields

Data groups or categories	*Component data elements*
All travel itinerary for PNR	PNR flight itinerary segments/ports, itinerary history, origin city/board point, destination city, active itinerary segments, cancelled segments, layover days, flown segments, flight information, flight departure date, board point, arrival port, open segments, alternate routing unknown (ARNK) segments, non-air segments, inbound flight connection details, on-carriage information, confirmation status
Form of payment (FOP) information	All FOP (cash, electronic, credit card number and expiry date, prepaid ticket advice (PTA), exchange), details of person/agency paying for ticket, staff rebate codes
All check-in information*	Generally available only after flight close-out: check-in security number, check-in agent I.D., check-in time, check-in status, confirmation status, boarding number, boarding indicator, check-in order
All seat information	Seats requested in advance; actual seats only after flight close-out*
All baggage information*	Generally available from DCS only after flight close-out: number of bags, bag tag number(s), weight of bag(s), all pooled baggage information, head of pool, number of bags in pool, bag carrier code, bag status, bag destination/ offload point
Travel agent information	Travel agency details, name, address, contact details, IATA code
Received-from information	Name of person making the booking
Go-show information*	Generally available only after check-in and flight close-out: go-show identifier
No-show information*	Only available after flight close-out: no-show history
General remarks	All information in general remarks section
Free text/code fields in OSI, SSR, SSI, remarks/history	All IATA codes

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* These elements are contained in the DCS and are not available prior to departure. A recommendation has been made to the World Customs Organization (WCO) to consider incorporating these elements in future API messaging. Depending on the airline system these elements may or may not be part of a PNR.

Appendix 2

MODEL PASSENGER INFORMATION/NOTICE FORMS

FORM A

(Paragraph 2.14.2 refers)

NOTICE FOR TRAVEL TO [NAME OF DESTINATION STATE]

Under [name of State of departure] law, the [name of destination State's public authority] will either access or receive certain travel and reservation information, known as Passenger Name Record or PNR data, about passengers flying to [name of destination State] from aircraft operators and travel agents.

The [name of destination State's public authority] has undertaken to use these PNR data for such purposes as improving aviation security, enhancing national and border security and preventing and combating terrorism, transnational and organized crimes. The PNR may include information provided during the booking process or held by airlines or travel agents, including credit card details and other similar private financial information.

The information will be retained for no longer than is reasonably necessary for the stated purposes related to its collection and for auditing and redress purposes, in accordance with the law of [name of destination State].

Further information about these arrangements, including measures to safeguard your personal data, can be obtained from your airline or travel agent or [name of destination State's public authority].

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FORM B

(Paragraph 2.14.2 refers)

NOTICE REGARDING PASSENGER NAME RECORD DATA

A growing number of States require airlines to provide access to their records containing certain travel and reservation information, known as Passenger Name Record (PNR) data. The International Civil Aviation Organization (ICAO) has developed guidelines to help States design their requirements and procedures for handling PNR data.

PNR data should be used by States only for such purposes as improving aviation security, enhancing national and border security and preventing and combating terrorism, transnational and organized crimes. PNR data may include information about passengers provided during the booking process or held by airlines or travel agents, including credit card details and other similar private financial information.

PNR data should be retained by State authorities for no longer than is reasonably necessary for the stated purposes related to their collection and for auditing and redress purposes, in accordance with national laws.

Further information about these arrangements, including measures to safeguard your personal data, can be obtained from the relevant national authority or your airline or travel agent.

— END —

JOINT COMMENTS OF
AIRLINES FOR AMERICA,
THE INTERNATIONAL AIR TRANSPORT ASSOCIATION,
THE REGIONAL AIRLINE ASSOCIATION, AND
THE NATIONAL AIR CARRIER ASSOCIATION

Docket CDC-2020-0013

ATTACHMENT 5

Air Transport & Travel Industry

Principles, Functional and Business Requirements
PNRGOV

Version 13.1

August 2013

(subject to approval and publication by the WCO API Contact Committee)

Version	Description of Change	Author	Date
10.1	Initial Publication of document. Numbering to correspond to EDIFACT version Message is based upon.	M Irons	19May10
11.1	- Changes identified during the PNRGOV meeting 04-05May11 - Updated the reference tables to articulate the amendments to Australian Customs and Border protection Service requirements - Updated the reference to ICAO's Doc 9944. - Updated the reference tables to reflect the current status of the use of ACKRES message by US (CBP) - Updated the reference tables to articulate the amendments to Australian Customs and Border protection Service requirements, removed reference to SSI in data elements. - Added a link to IATA glossary of terms, conversion to a final version,	A. Colbath M. Odgers M. Zitkova	01Jun11-25Jul 11
12.1	Changed the version number to match the new release of the Implementation Guide	M. Zitkova	30Jul 12
13.1	Implemented changes agreed at PNRGOV 07	M. Zitkova	19 Jul 13
13.1	Implemented editorial comments from PNRGOV WG review	M. Zitkova	29 Jul 13

Table of Contents

1 INTRODUCTION

This document is intended to provide guidance to airlines, System Suppliers and States who are implementing the PNRGOV message. The information contained in this document should be utilized in conjunction with the current PNRGOV implementation Guide. This document is a living document and will be updated for any future requirements / principles as agreed by the Working Group.

The PNRGOV message is designed to comply with States' Legislation for the provision of PNR data from Carriers.

1.1 Purpose

The purpose of this document is to clearly define the business requirements, Functional requirements and the underlying principles for the PNRGOV message. This document is a living document which although under version control does not require PADIS Board approval for any future changes / updates.

1.2 Scope

The scope of this document is to provide relevant information in conjunction with the implementation guide to ensure a consistent approach to implementation. It will also identify, where necessary, any bilateral agreements that need to be implemented for the usage of the PNRGOV message.

This document, although targeted at the implementation of the EDIFACT message, will also serve as a reference point for the development of the XML PNRGOV message.

1.3 Background

The PNRGOV message has been developed under the auspices of the PADIS Board. The message structure and the contents of the message are designed to provide a consistent approach for all airlines required to provide PNR information to States. Although not mandated for usage, currently it is envisaged that the message may provide the opportunity to rationalize data provision in the future. Within this document, Governments are referred to as States and Airlines as Carriers.

The basis for the development of the PNRGOV message was PADIS Standard v08.1

1.4 References

PADIS Codeset Directory

PADIS Message Standards

ICAO Doc 9944 Guidelines on Passenger Name Record (PNR) Data

Payment Card Industry – Data Security Standards (PCI – DSS)
https://www.pcisecuritystandards.org/index.shtml

1.5 Assumptions and Constraints

1.5.1 Assumptions

It is assumed that the message structure provided is the same for all States and that there are no additional requirements beyond those clearly identified within this document or in the associated Implementation Guide. It is further assumed that, through bilateral agreement, States will publish individual Implementation Guides conforming to said States legislative and regulatory authorities.

The basis for the legal provision of data required by any State is described in ICAO *Doc 9944 Guidelines on Passenger Name Record (PNR) Data* document.

1.5.2 Constraints

- Only data available in the operating Carriers' systems is passed to the States. There is no mandate for the provision of additional data not presently stored or provided within the systems.

- In line with the PCI –DSS requirements, standards for the storage of credit card details can be found at https://www.pcisecuritystandards.org/index.shtml. According to applicable laws, individual States expect to receive credit card details and thus the delivery method and any encryption needed must be addressed between States and Carriers. See section 3.1.7 for further details

- The protocol for message delivery depends on the capability of the States and Carriers. The protocol to be used is agreed on a bilateral basis.

1.6 Document Overview

This document addresses 3 key areas for the structure and delivery of the PNRGOV message. These are

1. **Principles** – This section provides guidance for all Carriers and States wishing to implement PNRGOV and identifies specific entities and other resources which provide guidance for usage and/or delivery. It also addresses the availability of data.
2. **Business Processes** – This section identifies the areas of the PNRGOV message which need to be managed according to the limitations of the data held by the operating Carrier and the data requirements of the States.
3. **Functional Processes –** This section provides an overview of the functional requirements of the States regarding submissions of data, communication protocols and system interaction.

2 PRINCIPLES

In order to provide a consistent approach to the provision of the PNRGOV message and the data that it might contain, a number of principles have been identified and should be adhered to, where possible. These principles include but are not limited to:

1. Messages are constructed in accordance with the PNRGOV structure as documented in the current PNRGOV Implementation Guide.

2. Promote the consistent use of the examples as displayed in the Implementation Guide for all government, carrier and system suppliers inquiries and exchange of information. All examples shown in Appendix B of the Implementation Guide have been reviewed and agreed by the PNRGOV Working Group.

3. It is the responsibility of the State to ensure that data privacy laws, with regard to the data received through PNRGOV message, are addressed and that the data is protected.

4. It is the responsibility of the Carrier to ensure that data privacy laws, with regard to the data collected and transmitted through PNRGOV message, are addressed and that the data is protected.

5. The requirement for PNR data transfer should be governed by explicit legal provisions and should include departure, arrival and overfly where applicable.

    - The reason for requiring PNR data should be clearly explained by the laws or regulations of the State, or in explanatory material accompanying such laws or regulations, as appropriate. (ICAO's Doc 9944 Section 2.4 Laws or Regulations).

    - A Carrier is obliged to observe the laws of both the State from which it transports passengers (State of departure) and the State to which these passengers are transported (Destination State). Therefore, when a State legislates for its PNR data transfer requirements, it should recognize that existing laws of other States may affect a Carrier's ability to comply with these requirements. In addition where a carrier operates flights outside the borders of its own country, the laws of the home state must also be adhered to.

    - Where a conflict arises between any two States, or where a Carrier advises of a conflict, the parties involved should consult with each other to determine how affected Carriers can continue to operate within the law of both States. (See ICAO's Doc 9944 Section 2.4 Laws or Regulations)

    - The Carrier will provide to the State that PNR data which is available within the Carrier's system(s). This has been defined by ICAO as: "States should not require an operator to provide PNR data that are not already collected or held in the operator's reservation or departure control systems. The specific data elements that might be available from an aircraft operator's system will also

depend on the type of air transport services provided by the operator." (See ICAO's Doc 9944 Section 2.4 Laws or Regulations), and by how and by whom the passengers' reservations were finalized.

6. The delivery schedules of the messages may vary according to each State. The delivery mechanism for the message may vary according to each State.

7. All data for the flights is sent in the initial message. Additionally, and in accordance with national requirements, the full PNR details including all changes to information previously transmitted is sent subsequently at the times specified by the States. Alternatively, and subject to national requirements and/or through bilateral agreement, only changes to the PNR(s) previously transmitted plus new PNR(s) may be sent at the specified times.

8. An acknowledgement message has been defined for States to be able to confirm to Carriers the receipt of the PNRGOV message. This enables automatic retransmission of messages not received / delivered. Where possible, it is in the best interests for this acknowledgement to be used to ensure messages are received and that the Carriers have fulfilled their obligations for the successful delivery. However, depending on the bilateral agreements in place between States and Carriers, it may not be applicable. See section 3.2.2 for further information.

9. The PNRGOV message does not replace any existing messages, but may result in reduction of other messages in the future.

10. It is responsibility of the Carrier to ensure timely generation and submission of the PNRGOV message in accordance with each State's legislation and /or regulations.

11. If retransmission of messages is applicable, details of the timings and the acknowledgement (ACK) message used to trigger this action can be found in section 3.2.2.

12. For split PNR data, the information provided is the record locator(s) of the split PNR(s) and the number of passengers split. No additional data is provided.

13. Emergency Lock procedures (i.e. process to control data release following an emergency or incident involving a particular flight) are based upon bilateral agreements between States and Carriers. System providers may be required to implement the capability to override data transmission restrictions put in place during an emergency lock.

14. While not currently mandated, the underlying principle guiding development of the PNRGOV message is to provide a standard message structure that may be utilized by States and Carriers.

15. States retain the authority to request information via their existing PNR Pull mechanisms.

16. To ensure consistency, it is recommended that States use the default service characters as defined in ISO9735 – 1 in the PNRGOV message structure. The UNA service segment shall be used if the service characters differ from the defaults.

17. Level A Character set as defined in ISO 9735 standard is used for the PNRGOV messages.

18. Certification procedures and validation of data are defined through a bilateral agreement between the State and Carrier.

19. Where messages are split for delivery due to application or protocol limitations, the data for any one PNR must not be split across transmitted blocks. A single transmission may contain multiple PNRs

20. Carriers will not be required to transmit PNRs that are created solely for the purpose of blocking inventory (i.e. seats) and not intended to contain passenger information.

3 FUNCTIONAL and BUSINESS REQUIREMENTS

3.1 Business Requirements

3.1.1 Multiple Sector Flights

The following examples are intended to show, based on the PNRGOV requirements of the individual States, to whom the Carrier will submit PNRGOV information.

Example 1 – Flight routing: LHR – CDG – JFK

States to whom PNRGOV message Data Sent

ARR / DEP	CDG	JFK
LHR	UK, FR	UK, US
CDG	N/A	US

PNRGOV Transmission –

UK - PNRGOV Required for Departing and Arriving passengers
FR - PNRGOV Required for Arriving
US - PNRGOV Required for Departing and Arriving passengers

Example 2 – Flight routing: CDG –JFK – YYZ

States to whom PNRGOV message Data Sent

ARR / DEP	JFK	YYZ
CDG	US	CA, US
JFK	N/A	US, CA

PNRGOV Transmission

FR - PNRGOV Required for Arriving passengers
US - PNRGOV Required for Departing and Arriving passengers
CA - PNRGOV Required for Arriving passengers

Note1- PNRGOV messages may be required to be sent for in transit flights according to applicable legislation of the State. This is also relevant for both Inbound and Outbound passengers.

Additional information relating to PNRGOV submission and transmission can be found in section 3.2.1.

3.1.2 Multiple State Requirements

In order to minimize the scale of development on both the Carrier(s) and State(s), the PNRGOV message defines all of the requirements as agreed through the PNRGOV working group. The governing principle is that all States should utilize the defined standard message to ensure greater interoperability.

3.1.3 Multiple System Interaction

Although the PNRGOV message is a standard message as adopted by the PADIS Board, the method of message delivery may vary according to the State receiving it and the carrier or provider sending it.

3.1.4 Overflights

Individual States may require information for flights overflying their territory to be sent to them in the PNRGOV format. This is anticipated to be catered for by each Carrier in their establishment of the rules for the data submission on a State by State basis.

3.1.5 Operating Carrier v Marketing Identification and Message Structure

The structure and the information contained in the PNRGOV is based on the Operating Carrier and the system(s) it uses to support the storage of flight data. The message structure is designed to also accommodate information relating to the Marketing Carrier.

3.1.6 Message Sizing

The size of the message is governed by the transport protocol or application used by the States and Carriers according to their system capabilities. If the message must be split into smaller component parts, this functionality may occur at the application or protocol layer; however, in no case should an individual PNR be split between messages. Depending on the solution to the splitting of the message, each Carrier / State is responsible for ensuring that the method adopted adheres to the individual audit requirements.

3.1.7 PCI – DSS Compliance

Due to the requirements of the PCI Security Standards Council (PCI –SSC) for securing credit card numbers and other associated sensitive data, when that data is stored within the Carrier's system that storage must be in accordance with their own PCI-DSS compliancy policy. Where the information is to be submitted to the States in line with relevant legislation and applicable PNRGOV requirements, the Carrier must adopt one of the following minimum standards for security relating to the data transmission:

- Secure Socket Layer (SSL) v3
- Transport Layer Security (TLS) v1.0
- Secure File Transfer protocol (SFTP) using SSH Secure Shell (SSH-2)
- IPSec over IPv4
- Other requirements as advised by PCI Security Standards Council.

3.1.8 PNR Data Elements

The data elements that are required by the States are managed through a bilateral arrangement between the States and Carriers as defined by national legislation. In an effort to standardize the PNRGOV message structure, the following table identifies the current position of the 18 items as required by States with the 19th Item being the

historical data of the previously identified 18 items. The governing principle is that all States should utilize the defined standard message to ensure greater interoperability. Information around these 19 items is defined in ICAO Document 9944 "Guidelines for Passenger Name Record (PNR) Data" to which ICAO Annex 9 Recommended Practice 3.48 refers.

If a Carrier maintains cancelled PNR's within its reservation system States may expect to receive those records – even if stored only as historical records within that system. If Carriers do not maintain these types of PNR records, then States would not receive them.

19 PNR Data Elements
PNR record locator code
Date of reservation / issue of ticket
Date(s) of intended travel
Name(s) on the PNR
Available frequent-flyer information (free tickets, upgrades, etc)
Other names on PNR, including numbers of travelers on the PNR
All available contact information (including originator information)
All forms of payment information and billing information (not including other transactions details linked to a credit card or account and not connected to the travel transaction)
Travel itinerary for specific PNR
Travel agency and Travel agent
Code share PNR information
Split / Divided PNR information
Travel status of passenger (including confirmations and check-in status)
Ticketing information including Ticket number, one way tickets, and Automated Ticket fare quotes
All baggage information
Seat information include seat number
General remarks including OSI and SSR information
Any collected APIS information
All historical changes to the PNR listed in data types 1 to 18 above

3.1.9 Context

Due to the nature of the information contained within individual PNRs and the rules pertaining to the provision of data, the PNRGOV data may need to be sent to multiple States. The timing of those individual transmissions may vary, and are dependent on the specific requirements of individual States.

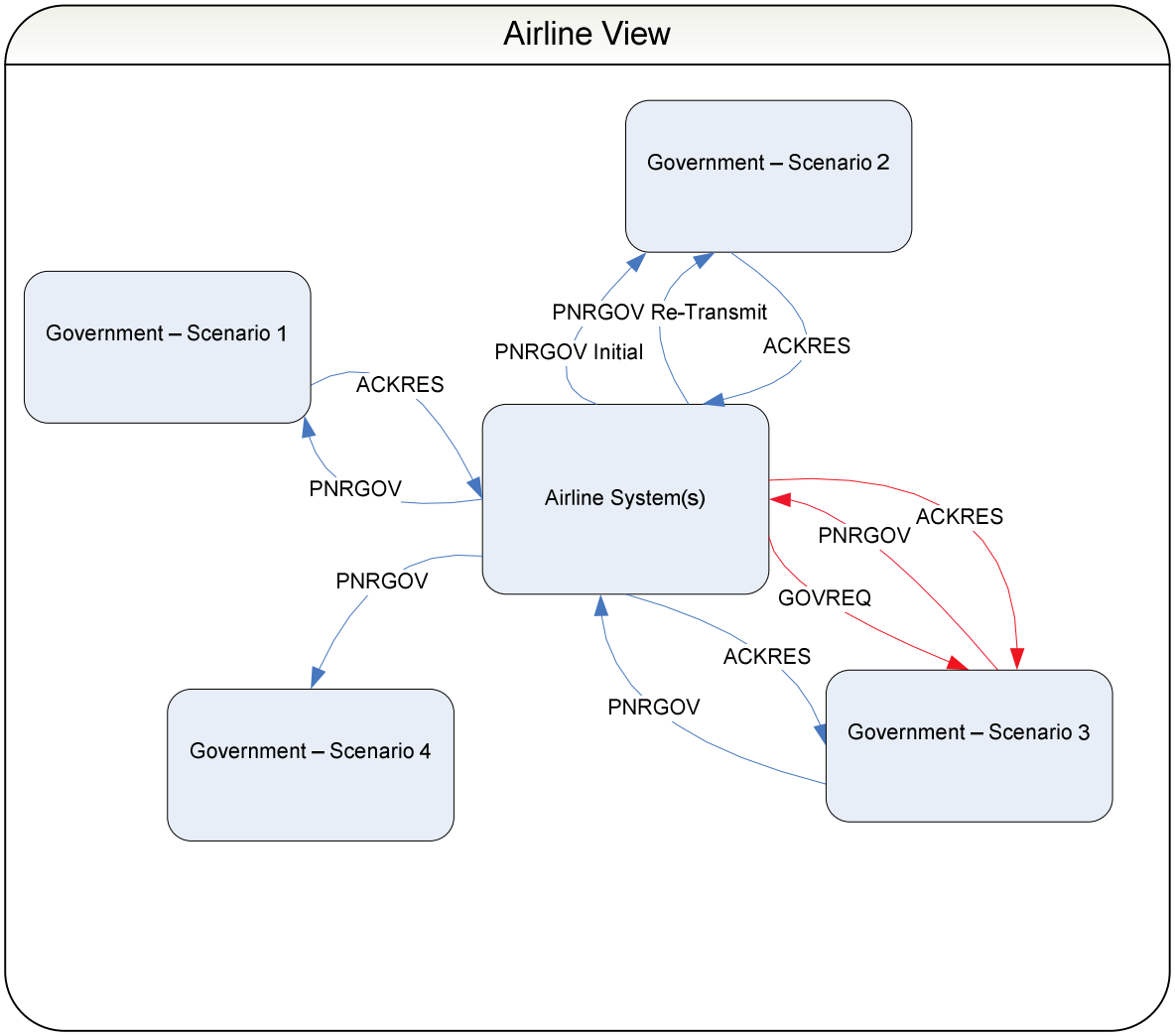

Exhibit 2 - Generic Context Diagram (airline perspective)

Government - Scenario 1: Airline system sends PNRGOV and Government system returns ACKRES.

Government - Scenario 2: Airline system sends PNRGOV and Government system does not return ACKRES. Airline system re-sends PNRGOV and government returns ACKRES.

Government - Scenario 3: Airline system sends PNRGOV, Government returns ACKRES. Government also sends ad hoc GOVREQ, Airline system sends PNRGOV and Government returns ACKRES.

Government - Scenario 4: Airline system sends PNRGOV and Government does not return ACKRES.

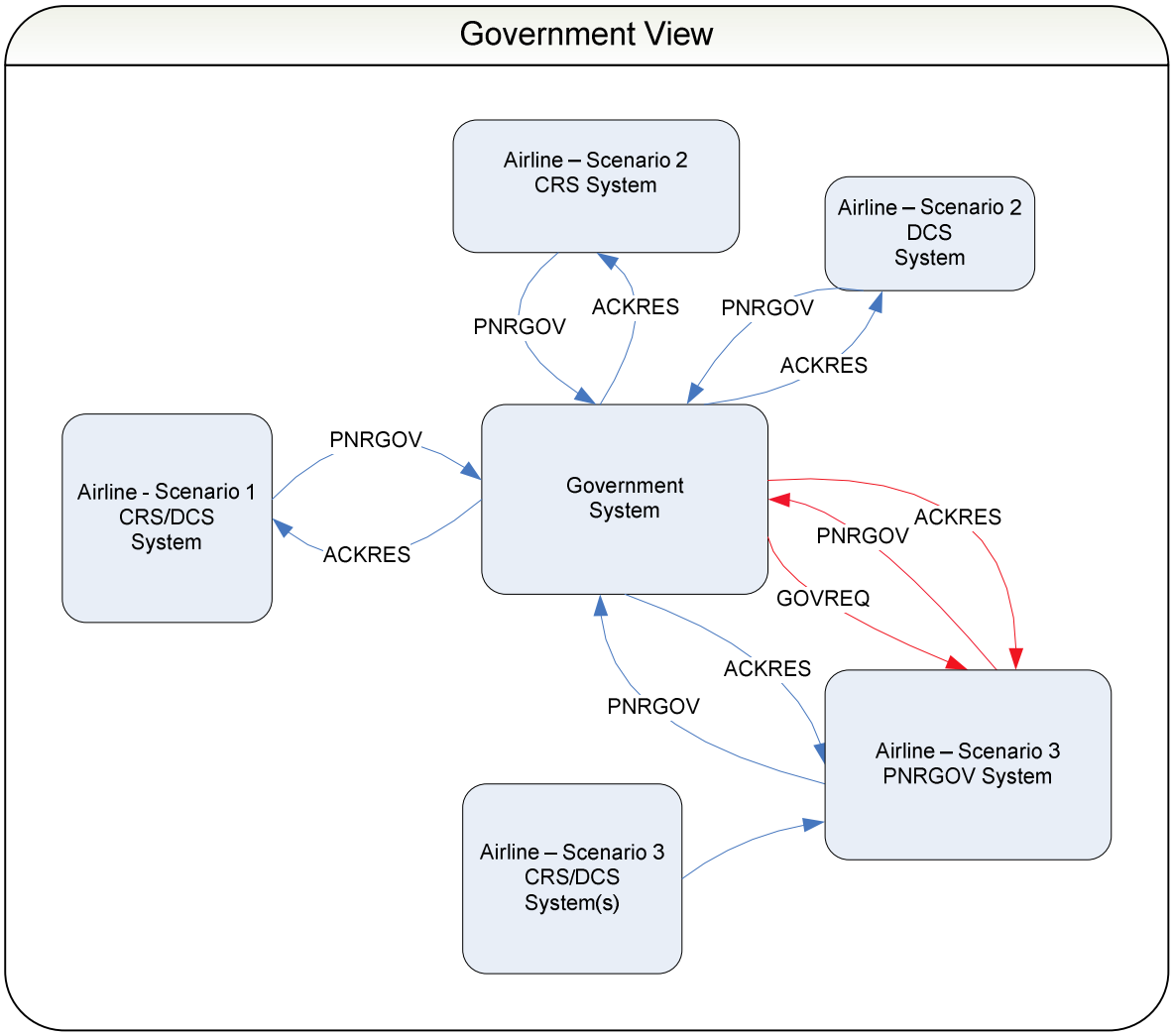

Exhibit 3 - Generic Context Diagram (government perspective)

CRS = Computer Reservation System (sometimes referred to as Global Distribution System)
DCS = Departure Control System

Airline - Scenario 1: Airline sends PNRGOV from a combined CRS and DCS system and Government returns ACKRES.
Airline - Scenario 2: Airline sends PNRGOV from separate CRS and DCS systems and Government returns ACKRES.
Airline - Scenario 3: Airline sends PNRGOV from an outside system with a process that gathers data from the CRS/DCS, sends PNRGOV and Government returns ACKRES. Government also sends ad hoc GOVREQ, Airline system sends PNRGOV and Government returns ACKRES.

3.2 Functional Requirements

3.2.1 Data submission

The following table is designed to show examples of the possible requirements by States for the delivery of the data.

State Bodies	No of Messages	Timing	Inbound / Outbound
AAA	1	Wheels Up	Inbound
BBB	2	1) -24hrs 2) Wheels Up	Inbound / Outbound
CCC	4	1) -72hrs, 2) -24hrs 3)-8hrs 4) Wheels up	Inbound / Outbound
DDD	5	1) -72hrs, 2) -24hrs, 3) -2hrs 4) -1hrs 5) Wheels Up	Inbound / Outbound

3.2.2 Message Acknowledgement and Retransmission

In order for the Carriers to be able to comply with, and ensure the delivery of PNRGOV messages to the States, the optimal method is for States to provide an acknowledgement of receipt back to the Carrier. This is an acknowledgement that the State has received the message. The acknowledgement in no way implies that the data has been processed. If the Carrier does not receive a message acknowledging receipt, this will facilitate the retransmission of the message to the relevant State.
An acknowledgement message (ACKRES) has been defined to enable additional information to be provided to the Carriers; such as content errors identified while processing the data. The ACKRES message may be agreed and implemented through a bilateral agreement between individual States and Carriers.

UN CONTRL messages can be used to report syntax errors. This is based on a bilateral agreement between States and Carriers.

3.2.3 Provision of an Ad-hoc request using the GOVREQ message

The State may require an ad-hoc transmission of PNRGOV data, subject to a bilateral agreement between the State and the carrier. The ad-hoc request may be for a specific flight/date or for a specific record locator. This message is to be used only in exceptional situations.

3.2.4 Separate Operational Systems – DCS without full PNR access

A Carrier may have a local DCS or agreements in place with one or more systems to handle their operations at certain stations. It should also be noted that multiple systems may handle the flight throughout its itinerary, e.g., with a flight routing AAA - BBB - CCC – DDD, company one handles the flight out of city AAA, company two handles the flight out of BBB, and the actual operating Carrier handles the flight out of CCC to DDD. The handling systems may not have all of the information which is contained in the original PNR. Instead, they may have only sufficient data needed to identify the passenger and any particular special conditions for the purpose of check-in. In such circumstances, the State and Carrier may bilaterally agree on the information available for inclusion in the PNRGOV message.
A Carrier and State may also bilaterally agree to exchange the PNRGOV message with only that data which is currently available within the DCS system used by the operating Carrier or its contracted handling agent to support the flight/station for which the PNR data is required.

3.2.5 Manual DCS operations

There may be times or locations where the check in process is handled in a manual operation, e.g. system outages, small stations, etc. In this case there is no information available to be sent to the States at the stipulated transmission times.

3.3 APPENDIX A - GLOSSARY

Please refer to IATA Passenger Services Glossary of Terms located on IATA Web site: http://www.iata.org/whatwedo/passenger/Documents/passenger-glossary-of-terms.xls.

JOINT COMMENTS OF
AIRLINES FOR AMERICA,
THE INTERNATIONAL AIR TRANSPORT ASSOCIATION,
THE REGIONAL AIRLINE ASSOCIATION, AND
THE NATIONAL AIR CARRIER ASSOCIATION

Docket CDC-2020-0013

ATTACHMENT 6

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
44907(a)(1) ..	49 App.:1515(a)(1).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, §1115(a), (b), (d)–(h); added Aug. 5, 1974, Pub. L. 93–366, §106, 88 Stat. 414; restated Aug. 8, 1985, Pub. L. 99–83, §551(a), 99 Stat. 222.
44907(a)(2) ..	49 App.:1515(a)(2), (3).	
44907(a)(3) ..	49 App.:1515(c).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, §1115(c); added Aug. 5, 1974, Pub. L. 93–366, §106, 88 Stat. 414; restated Aug. 8, 1985, Pub. L. 99–83, §551(a), 99 Stat. 222; Nov. 16, 1990, Pub. L. 101–604, §102(c)(2), 104 Stat. 3069.
44907(b)	49 App.:1515(b).	
44907(c)	49 App.:1515(d).	
44907(d)(1) ..	49 App.:1515(e)(2).	
44907(d)(2) ..	49 App.:1515(e)(1).	
44907(d)(3) ..	49 App.:1515(e)(3).	
44907(d)(4) ..	49 App.:1515(f).	
44907(e)	49 App.:1515(g).	
44907(f)	49 App.:1515(h).	

In subsections (a)(2)(A) and (d)(2)(A)(i) and (3), the words "government of a foreign country" are substituted for "foreign government" for consistency in the revised title and with other titles of the United States Code.

In subsection (a)(2)(B), the word "foreign" is added for clarity and consistency in this section.

In subsection (b)(2), the word "foreign" is added for consistency in the revised title and with other titles of the Code.

In subsection (c), the words "government of a foreign country" are substituted for "foreign government" for consistency in the revised title and with other titles of the Code.

In subsection (d)(1), before clause (A), the words "Subject to paragraph (1)" are omitted as surplus. In clause (C), the words "foreign country" are substituted for "foreign government" for clarity and consistency in the revised title and with other titles of the Code. The word "prescribe" is substituted for "impose" for consistency in the revised title and with other titles of the Code. The word "provide" is substituted for "engage in" for consistency in the revised title. In clause (D), the words "directly or indirectly" are omitted as surplus.

In subsection (d)(2)(A)(i), the words "identified" and "of such airport" are omitted as surplus.

In subsection (d)(2)(B), the words "issue a travel advisory required under section 44908(a) of this title" are substituted for "comply with the requirement of section 1515(a) [sic] of this Appendix that a travel advisory be issued" to eliminate unnecessary words.

In subsection (d)(4), the words "An action required . . . is no longer required" are substituted for "The sanctions required to be imposed with respect to an airport . . . may be lifted" to eliminate unnecessary words.

In subsection (e), before clause (1), the word "provide" is substituted for "engage in" for consistency in the revised title.

In subsection (f), the words "issued under authority vested in" are omitted as surplus.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 44908, 44938, 46301, 46316 of this title.

§ 44908. Travel advisory and suspension of foreign assistance

(a) TRAVEL ADVISORIES.—On being notified by the Secretary of Transportation that the Secretary of Transportation has decided under section 44907(d)(2)(A)(ii) of this title that a condition exists that threatens the safety or security of passengers, aircraft, or crew traveling to or from a foreign airport that the Secretary of Transportation has decided under section 44907 of this title does not maintain and carry out effective security measures, the Secretary of State—

(1) immediately shall issue a travel advisory for that airport; and

(2) shall publicize the advisory widely.

(b) SUSPENDING ASSISTANCE.—The President shall suspend assistance provided under the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) or the Arms Export Control Act (22 U.S.C. 2751 et seq.) to a country in which is located an airport with respect to which section 44907(d)(1) of this title becomes effective if the Secretary of State decides the country is a high terrorist threat country. The President may waive this subsection if the President decides, and reports to Congress, that the waiver is required because of national security interests or a humanitarian emergency.

(c) ACTIONS NO LONGER REQUIRED.—An action required under this section is no longer required only if the Secretary of Transportation has made a decision as provided under section 44907(d)(4) of this title. The Secretary shall notify Congress when the action is no longer required to be taken.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1211; Pub. L. 105–277, div. G, subdiv. B, title XXII, §2224(a), Oct. 21, 1998, 112 Stat. 2681–819.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
44908(a)	49 App.:1515a(a).	Aug. 8, 1985, Pub. L. 99–83, §552, 99 Stat. 226.
44908(b)	49 App.:1515a(b).	
44908(c)	49 App.:1515a(c), (d).	

In subsection (a)(3), the words "take the necessary steps to" are omitted as surplus.

In subsection (b), the words "all" and "the requirements of" are omitted as surplus.

Subsection (c) is substituted for 49 App.:1515a(c) and (d) to eliminate unnecessary words.

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (b), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§2151 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of Title 22 and Tables.

The Arms Export Control Act, referred to in subsec. (b), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§2751 et seq.) of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and Tables.

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–277 inserted "and" at end of par. (1), redesignated par. (3) as (2), and struck out former par. (2) which read as follows: "shall publish the advisory in the Federal Register; and".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 44907, 46301, 46316 of this title.

§ 44909. Passenger manifests

(a) AIR CARRIER REQUIREMENTS.—(1) Not later than March 16, 1991, the Secretary of Transpor-

tation shall require each air carrier to provide a passenger manifest for a flight to an appropriate representative of the Secretary of State—

(A) not later than one hour after that carrier is notified of an aviation disaster outside the United States involving that flight; or

(B) if it is not technologically feasible or reasonable to comply with clause (A) of this paragraph, then as expeditiously as possible, but not later than 3 hours after the carrier is so notified.

(2) The passenger manifest should include the following information:

(A) the full name of each passenger.

(B) the passport number of each passenger, if required for travel.

(C) the name and telephone number of a contact for each passenger.

(3) In carrying out this subsection, the Secretary of Transportation shall consider the necessity and feasibility of requiring air carriers to collect passenger manifest information as a condition for passengers boarding a flight of the carrier.

(b) FOREIGN AIR CARRIER REQUIREMENTS.—The Secretary of Transportation shall consider imposing a requirement on foreign air carriers comparable to that imposed on air carriers under subsection (a)(1) and (2) of this section.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 1211; Pub. L. 106–181, title VII, § 718, Apr. 5, 2000, 114 Stat. 163.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
44909(a)(1) ..	49 App.:1380(a).	Aug. 23, 1958, Pub. L. 85–726, § 410, 72 Stat. 769; Oct. 15, 1962, Pub. L. 87–820, § 8, 76 Stat. 936; restated Nov. 16, 1990, Pub. L. 101–604, § 203(a), 104 Stat. 3082.
44909(a)(2) ..	49 App.:1380(b).	
44909(a)(3) ..	49 App.:1380 (note).	Nov. 16, 1990, Pub. L. 101–604, § 203(b), 104 Stat. 3082.
44909(b)	49 App.:1380 (note).	Nov. 16, 1990, Pub. L. 101–604, § 203(c), 104 Stat. 3083.

In subsection (a)(1), before clause (A), the words "each air carrier" are substituted "all United States air carriers" because of the definition of "air carrier" in section 40102(a) of the revised title. The words "an appropriate representative of the Secretary of State" are substituted for "appropriate representatives of the United States Department of State" because of 22:2651 and for consistency in the revised title and with other titles of the United States Code. In clause (B), the words "to comply with clause (A) of this paragraph" are substituted for "to fulfill the requirement of this subsection" for consistency in the revised title and with other titles of the Code.

In subsection (a)(2), before clause (B), the words "For purposes of this section" are omitted as unnecessary.

In subsection (a)(3), the words "In carrying out this subsection" are substituted for "In implementing the requirement pursuant to the amendment made by subsection (a) of this section" for clarity and to eliminate unnecessary words.

In subsection (b), the word "imposing" is added for clarity. The words "imposed on air carriers under subsection (a)(1) and (2) of this section" are substituted for "imposed pursuant to the amendment made by subsection (a)" for clarity and because of the restatement.

AMENDMENTS

2000—Subsec. (a)(2). Pub. L. 106–181 substituted "should" for "shall" in introductory provisions.

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106–181, set out as a note under section 106 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 40109, 46301, 46316 of this title.

§ 44910. Agreements on aircraft sabotage, aircraft hijacking, and airport security

The Secretary of State shall seek multilateral and bilateral agreement on strengthening enforcement measures and standards for compliance related to aircraft sabotage, aircraft hijacking, and airport security.

(Pub. L. 103–272, § 1(e), July 5, 1994, 108 Stat. 1212.)

HISTORICAL AND REVISION NOTES

Revised Section	*Source (U.S. Code)*	*Source (Statutes at Large)*
44910	49 App.:1515 (note).	Aug. 8, 1985, Pub. L. 99–83, § 556, 99 Stat. 227.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 106 of this title.

§ 44911. Intelligence

(a) DEFINITION.—In this section, "intelligence community" means the intelligence and intelligence-related activities of the following units of the United States Government:

(1) the Department of State.

(2) the Department of Defense.

(3) the Department of the Treasury.

(4) the Department of Energy.

(5) the Departments of the Army, Navy, and Air Force.

(6) the Central Intelligence Agency.

(7) the National Security Agency.

(8) the Defense Intelligence Agency.

(9) the Federal Bureau of Investigation.

(10) the Drug Enforcement Administration.

(b) POLICIES AND PROCEDURES ON REPORT AVAILABILITY.—The head of each unit in the intelligence community shall prescribe policies and procedures to ensure that intelligence reports about international terrorism are made available, as appropriate, to the heads of other units in the intelligence community, the Secretary of Transportation, and the Administrator of the Federal Aviation Administration.

(c) UNIT FOR STRATEGIC PLANNING ON TERRORISM.—The heads of the units in the intelligence community shall consider placing greater emphasis on strategic intelligence efforts by establishing a unit for strategic planning on terrorism.

(d) DESIGNATION OF INTELLIGENCE OFFICER.—At the request of the Secretary, the Director of Central Intelligence shall designate at least one intelligence officer of the Central Intelligence Agency to serve in a senior position in the Office of the Secretary.

(e) WRITTEN WORKING AGREEMENTS.—The heads of units in the intelligence community, the Secretary, and the Administrator shall review and, as appropriate, revise written working

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THE REGIONAL AIRLINE ASSOCIATION, AND
THE NATIONAL AIR CARRIER ASSOCIATION

Docket CDC-2020-0013

ATTACHMENT 7

REMINDER: Apply for ESTA no later than 72 hours before departing for the United States. Real-time approvals will no longer be available and arriving at the airport without a previously approved ESTA will likely result in being denied boarding.

FREQUENTLY ASKED QUESTIONS

If you are looking for more information about the ESTA application process or to review the Frequently Asked Questions, please explore the help topics below.

COLLAPSE ALL | EXPAND ALL

Most Popular Questions

What is the Electronic System for Travel Authorization (ESTA)?

To strengthen the security of travel to the United States under the Visa Waiver Program, requirements to travel visa-free have been enhanced. Nationals of Visa Waiver Program countries will still be eligible to travel without a visa but will have to obtain an approved travel authorization prior to their travel to the United States.

The Department of Homeland Security and the United States Customs and Border Protection have provided a secure public Web site with an automated form for you, or a third party, to complete in order to apply for a travel authorization. Once you enter the required biographic, travel, and payment

REMINDER: Apply for ESTA no later than 72 hours before departing for the United States. Real-time approvals will no longer be available and arriving at the airport without a previously approved ESTA will likely result in being denied boarding.

FREQUENTLY ASKED QUESTIONS

If you are looking for more information about the ESTA application process or to review the Frequently Asked Questions, please explore the help topics below.

COLLAPSE ALL | EXPAND ALL

Most Popular Questions

About ESTA and The Visa Waiver Program

- What is the Electronic System for Travel Authorization (ESTA)?
- What is the difference between an ESTA and a visa?
- Who is required to have a travel authorization?
- Why do I need to fill out an ESTA application if I'm traveling to the United States under the Visa Waiver Program?
- Does a travel authorization guarantee me admission to the United States?
- What is the Visa Waiver Program?
- Do I need to apply if I'm only transiting the United States en route to another country?
- If I have a travel authorization through ESTA, do I need to fill out an I-94W?
- Which countries participate in the Visa Waiver Program?
- What are the passport requirements for travel under the Visa Waiver Program?
- How do I get more information about the Visa Waiver Program?
- When must I obtain a visa to travel to the United States?
- Are there disadvantages to using the Visa Waiver Program?
- What if a Visa Waiver Program applicant is found to be inadmissible?
- Why is authorization under ESTA required for United States-bound travel under the Visa Waiver Program?
- By adding these additional questions, won't ESTA now be the equivalent of an electronic visa?

- What if I have dual citizenship and/or have a passport from more than one country?
- What if I have dual citizenship, but my non-VWP passport is expired or I do not have a passport for that country?
- Do I need to apply for ESTA if I am a citizen of a Visa Waiver Program (VWP) country and...?
- If I am in Canada or Mexico and want to drive to the U.S., do I need to apply for ESTA?
- Do I need to apply for ESTA if...?
- Where do I find information about the Terrorist Travel Prevention Act (The Act)?

Do I need to apply if I'm only transiting the United States en route to another country?

Eligible nationals or citizens of countries that participate in the Visa Waiver Program require either a travel authorization or a visa to transit the United States. If a traveler is only planning to transit through the United States en route to another country, when he or she completes the travel authorization application in ESTA, the traveler should select "Yes" to the question "Is your travel to the US occurring in transit to another country?".

- Getting Started
- Privacy and Security
- Email Verification
- Completing Your ESTA Application
- Fees and Payment Options
- Updating Your Information
- Submitting a Group of Applications
- Checking Your ESTA Status
- "Travel Not Authorized"
- Traveling with an ESTA
- Troubleshooting
- Social Media

For additional inquiries about the ESTA application process or the Visa Waiver Program, visit the CBP Info Center (https://help.cbp.gov/app/answers/list/kw/esta/search/1).

CONTACT SUPPORT

Travel Communications Center

Call:**1-202-325-8000**

To submit an inquiry:

CBP Info Center (https://help.cbp.gov/app/answers/list/p/0/c/0/kw/esta/search/1)

24 hours per day, 7 days a week

HELPFUL LINKS

Dept. of Homeland Security:

DHS.gov (http://www.dhs.gov)

Customs and Border Protection:

CBP.gov (http://www.cbp.gov)

CBP.gov/travel (http://www.cbp.gov/travel)

SITE POLICIES

ACCESSIBILITY (http://www.cbp.gov/site-policy-notices/accessibility)

PRIVACY STATEMENT (/privacystatement)

Paperwork Reduction Act: An agency may not conduct or sponsor an information collection and a person is not required to respond to this information unless it displays a current valid OMB control number and an expiration date. The control number for this collection is 1651-0111. The estimated average time to complete this application is 23 minutes. If you have any comments regarding this burden estimate you can write to U.S. Customs and Border Protection, Office of Regulations and Rulings, 90 K Street, NE, 10th Floor, Washington DC 20229. Expiration March 31, 2020.

REMINDER: Apply for ESTA no later than 72 hours before departing for the United States. Real-time approvals will no longer be available and arriving at the airport without a previously approved ESTA will likely result in being denied boarding.

FREQUENTLY ASKED QUESTIONS

If you are looking for more information about the ESTA application process or to review the Frequently Asked Questions, please explore the help topics below.

COLLAPSE ALL | EXPAND ALL

- Most Popular Questions
- About ESTA and The Visa Waiver Program
- Getting Started
- Privacy and Security
- Email Verification
- Completing Your ESTA Application
- Fees and Payment Options
- Updating Your Information
- Submitting a Group of Applications
- Checking Your ESTA Status
- "Travel Not Authorized"
- Traveling with an ESTA

How long is my ESTA valid for?

Unless revoked, travel authorizations are valid for two years from the date of authorization, or until your passport expires, whichever comes first. The Authorization Approved screen displays your travel authorization expiration date.

Your ESTA authorization is generally valid for multiple trips over a period of two years (starting the date that you are approved) or until your passport expires, whichever comes first*. This means that as long as you received an ESTA authorization to travel, you do not have to reapply during the validity period.

If your ESTA expires while in the U.S. it will not affect your departure.

Note: It is important to PRINT a copy of the document for your records. The printout is not required upon arrival into the United States, as the officers have the information electronically.

Receiving ESTA authorization does not mean you may stay in the U.S. for two years. It only allows you to travel to the U.S. under the terms of the Visa Waiver Program (VWP), which only allows you to stay in the U.S. for 90 days or less. If you plan to stay for longer than 90 days, you must obtain a visa at the nearest U.S. Embassy or Consulate.

*If you obtain a new passport or change your name, gender or country of citizenship, you will be required to apply for a new travel authorization. This is also required if one of your answers to any of the VWP eligibility questions changes. The associated fee of US $14 will be charged for each new application submitted.

Note: CBP recommends that you apply for ESTA at the time you book your travel, but no less than 72 hours prior to boarding.

Troubleshooting

Social Media

For additional inquiries about the ESTA application process or the Visa Waiver Program, visit the CBP Info Center (https://help.cbp.gov/app/answers/list/kw/esta/search/1).

CONTACT SUPPORT

Travel Communications Center

Call:**1-202-325-8000**

To submit an inquiry:

CBP Info Center (https://help.cbp.gov/app/answers/list/p/0/c/0/kw/esta/search/1)

24 hours per day, 7 days a week

HELPFUL LINKS

Dept. of Homeland Security:

DHS.gov (http://www.dhs.gov)

Customs and Border Protection:

CBP.gov (http://www.cbp.gov)

CBP.gov/travel (http://www.cbp.gov/travel)

SITE POLICIES

ACCESSIBILITY (http://www.cbp.gov/site-policy-notices/accessibility)

PRIVACY STATEMENT (/privacystatement)

Paperwork Reduction Act: An agency may not conduct or sponsor an information collection and a person is not required to respond to this information unless it displays a current valid OMB control number and an expiration date. The control number for this collection is 1651-0111. The estimated average time to complete this application is 23 minutes. If you have any comments regarding this burden estimate you can write to U.S. Customs and Border Protection, Office of Regulations and Rulings, 90 K Street, NE, 10th Floor, Washington DC 20229. Expiration March 31, 2020.

JOINT COMMENTS OF
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THE REGIONAL AIRLINE ASSOCIATION, AND
THE NATIONAL AIR CARRIER ASSOCIATION

Docket CDC-2020-0013

ATTACHMENT 8

Privacy Impact Assessment Update
for the
Electronic System for Travel Authorization (ESTA)

DHS/CBP/PIA-007(e)

February 17, 2016

Contact Point

Suzanne Shepherd
Director - ESTA
U.S. Customs and Border Protection
(202) 344-3710

Reviewing Official

Karen L. Neuman
Chief Privacy Officer
Department of Homeland Security
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Abstract

The Electronic System for Travel Authorization (ESTA) is a web-based application and screening system used to determine whether certain foreign nationals are eligible to travel to the United States under the Visa Waiver Program (VWP). The U.S. Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) is publishing this update to the Privacy Impact Assessment (PIA) for ESTA, last updated on November 3, 2014, to provide notice and privacy risk analysis of enhancements to the ESTA application questionnaire and expansion of the ESTA application data elements in accordance with the requirements of the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015.

Overview

In the wake of the terrorist attack on the Nation on September 11, 2001, Congress enacted the Implementing Recommendations of the 9/11 Commission Act of 2007.[1] Section 711 of that Act sought to address the security vulnerabilities associated with Visa Waiver Program (VWP) travelers who are not subject to the same degree of screening as other international visitors to the United States. As a result, section 711 required CBP to develop and implement a fully automated electronic travel authorization system to collect biographic and other information necessary to evaluate the security risks and eligibility of an applicant to travel to the United States under the VWP. The VWP is a travel facilitation program with robust security standards designed to prevent terrorists and other criminal actors from exploiting the VWP to enter the country.

ESTA is a web-based system designed to determine foreign nationals' eligibility to travel to the United States under the VWP. Applicants use the ESTA website to submit biographic information and respond to questions related to an applicant's eligibility to travel under the VWP. ESTA information is necessary to issue a travel authorization, consistent with the requirements of the Form I-94W.[2] A VWP traveler who intends to arrive at a U.S. air or sea port of entry must obtain an approved travel authorization via the ESTA website prior to boarding a carrier bound for the United States. The ESTA program allows CBP to eliminate the requirement that VWP travelers complete a Form I-94W prior to being admitted to the United States via an air or sea port of entry because the ESTA application electronically captures duplicate biographical and travel data elements collected on the paper Form I-94W.

[1] Pub. L. 110-53, codified at 8 U.S.C. § 1187(a)(11), (h)(3), available at, http://www.gpo.gov/fdsys/pkg/PLAW-110publ53/html/PLAW-110publ53.htm.
[2] *See* 8 CFR § 217.5(c). The Form I-94W must be completed by all nonimmigrant visitors not in possession of a visitor's visa, who are nationals of one of the VWP countries enumerated in 8 CFR § 217.

Reason for the PIA Update

In accordance with the requirements of the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015,[3] CBP is addressing the new eligibility requirements established by the Act and strengthening the security of the VWP to appropriately meet the current threat environment. The Act generally makes certain nationals of VWP countries ineligible (with some exceptions) from traveling to the United States under the VWP if the applicant is also a national of, or at any time on or after March 1, 2011, has been present in Iraq, Syria, a designated state sponsor of terrorism (currently Iran, Sudan, and Syria), or any other country or area of concern as designated by the Secretary of Homeland Security. CBP has determined that the ESTA application and Form I-94W enhancements will help the Department remain compliant with its legal requirements. Furthermore, the enhancements will allow the VWP to adapt to the heightened threat environment due to the continued increase in the number of foreign fighters from VWP countries participating in the Syria and Iraq conflicts. Specifically, CBP is amending the ESTA application to include questions related to an individual's ability to travel under the VWP for all new and renewal ESTA applications beginning February 23, 2016.[4] This additional information will permit CBP to determine whether travelers are eligible to travel under the VWP consistent with the new legal restrictions found in section 217(a)(12). Requiring ESTA applicants to provide additional information also enhances CBP's ability to identify those applicants who pose a potential security threat to the United States, including known or suspected terrorists.

Under the new law,[5] the Secretary of Homeland Security may waive certain VWP travel restrictions if the Secretary determines that such a waiver is in the law enforcement or national security interests of the United States. Whether ESTA applicants will receive a waiver will be determined on a case-by-case basis, in accordance with policy and operations guidance.

ESTA Enhancement Data Elements

The following data elements will be added to the online ESTA form for all new and renewal ESTA applications:

[3] *See* Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, Pub. L. No. 114-113, Division O, Title II.
[4] Approved ESTA applications are valid for a maximum of two years (depending on the VWP country), or until the passport expires, whichever comes first. Approved ESTA applications support multiple trips a traveler may make to the United States without having to re-apply for another ESTA. *See* "About the Electronic System for Travel Authorization (ESTA,)" for more general ESTA information, *available at* http://www.cbp.gov/travel/international-visitors/esta.
[5] *See* Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, Pub. L. No. 114-113, Division O, Title II.

- Previous Countries of Travel;
- Dates of Previous Travel;
- Countries of Previous Citizenship;
- Other Current or Previous Passports; and
- Identity Card Numbers.

Eligibility Questions

This PIA addresses the new questions mandated by the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, and an updated version of a question found on the current application.[6]

New Eligibility Questions:

Have you traveled to, or been present in, Iraq, Syria, Iran, or Sudan on or after March 1, 2011? [Yes, No]

- If Yes:
    - Select Country (Iraq, Syria, Iran, Sudan)
    - Date? (mm/yyyy to mm/yyyy)
    - Primary Reason?
        - To travel as a tourist (vacation)
        - For personal travel or a family visit (including emergencies)
        - For commercial/business purposes
        - To carry out official duties as a full-time employee of the government of a Visa Waiver Program country
        - To perform military service in the armed forces of a Visa Waiver Program country
        - To conduct work as a journalist
        - To engage in humanitarian assistance on behalf of a humanitarian or international non-governmental organization (NGO)

[6] The existing question is being updated to reflect the list of diseases currently approved by OMB for use on the ESTA application (and I-94W).

- To carry out official duties on behalf of an international organization or regional (multilateral or inter-governmental) organization
- To carry out official duties on behalf of a sub-national government or body of a VWP country
- To attend an academic institution
- To participate in a professional exchange or conference
- To participate in a cultural exchange program
- Other [Write-in field]

- If travel to Iran for business purposes was primary reason for travel:
  - Please identify the company or entity on behalf of which you traveled to Iran for business purposes. [Write-in field]
  - What was your official position/title with the company or entity identified? [Write-in field]
  - If different than your current employer, please provide contact information for the company or entity identified, including primary address and telephone number. [Write-in field]
  - Please provide your Iranian Business Visa Number. [Write-in field]
  - Please list all companies and entities in Iran with which you had business dealings. [Write-in field]
- If travel to Iraq for business purposes was primary reason for travel:
  - Please identify the company or entity on behalf of which you traveled to Iraq for business purposes. [Write-in field]
  - What was your official position/title with the company or entity identified? [Write-in field]
  - If different than your current employer, please provide contact information for the company or entity identified, including primary address and telephone number. [Write-in field]
  - Please provide your Iraqi Business Visa Number. [Write-in field]
  - Please list all companies and entities in Iraq with which you had business dealings. [Write-in field]

- If to engage in humanitarian assistance on behalf of a humanitarian or international non-governmental organization was primary reason for travel:
    - Please identify the organization or entity on behalf of which you traveled to Iraq, Syria, Iran, or Sudan for humanitarian purposes.
    - Does your organization have consultative status with UN ECOSOC? [Yes, No] [Write-in Field]
    - What was your official position/title with the organization or entity identified? [Write-in Field]
    - If different than your current employer, please provide contact information for the organization or entity identified, including primary address and telephone number. [Write-in field]
    - Please provide your Iraqi, Syrian, Iranian, or Sudanese Visa Number related to your humanitarian travel. [Write-in field]
    - If your organization or entity has been recipient of U.S. government funding for humanitarian assistance within the last five years, please provide most recent grant number. [Write-in Field]
    - Please provide us information about the type of work you were doing in country during this time. [Write-in Field]
    - Please include any information you are willing to share about other NGOs or international, national, or state agencies with which you worked. [Write-in Field]
    - Any additional comments. [Write-in Field]
- If to carry out official duties on behalf of an international organization, or a sub-national government for primary travel:
    - Please identify the international (multilateral or intergovernmental) organization or regional (multilateral or intergovernmental) organization, on behalf of which you traveled to Iraq, Syria, Iran, or Sudan.
    - Please identify the sub-national government or body of a VWP country on behalf of which you traveled to Iraq, Syria, Iran, or Sudan. [Write-in Field]
    - What was your official position/title with the organization or government identified? [Write-in field]
    - Please provide your Iraqi, Syrian, Iranian, or Sudanese Visa Number related to your official travel on behalf of an international or regional organization, or subnational government. [Write-in field]

- Have you ever been issued a G-Visa or A-Visa by a United States Embassy or Consulate? [Yes, No]
  - If "Yes", please provide your G-Visa or A-Visa number, if known [Write-in Field]
- Have you ever been issued a United Nations Laissez-Passer?
  - If "Yes", please provide your Laissez-Passer number

- If Journalism was reason for primary travel:
  - Please identify the company, entity, or organization on behalf of which you traveled to Iraq, Syria, Iran, or Sudan to engage in journalism. [Write-in field]
  - What is your official position with the company, entity, or organization identified? [Write-in field]
  - Have you ever been issued an I-Visa by a United States Embassy or Consulate? [Yes, No]
    - If Yes, Please provide your I-Visa number (if known). [Write-in field]
- Have you ever been issued a passport (or national identity card for travel) by any other country? [Yes, No]
  - If Yes, applicant must enter:
    - Country [Full Country List]
    - Most recent passport or national identity cards year of expiration [yyyy]
    - Passport Number/National Identity Card Number [Write-in Field]
    - Option to enter additional passports or national identity cards
- Are you now a citizen or national of any other country? [Yes, No]
  - If Yes:
    - Other countries of current citizenship or nationality [Full Country List]
  - How did you acquire citizenship/nationality from this country?
    - By Birth?
    - Through Parents?
    - Naturalized?
    - Other [Write-in field]

- Have you ever been a citizen or national of any other country? [Yes, No]
    - If Yes, list other countries of previous citizenship or nationality [Full Country List]
- You have indicated that you are not a citizen or national of your country of birth. From the list below, please select ALL statements that apply with respect to your country of birth:
    - Did not acquire citizenship at birth or have never held citizenship in birth country
    - Renounced citizenship of birth country
    - Have not lived or resided in birth country within the past five years
    - Have not held a passport or national identity card from birth country within the past five years
    - None of the above
    - Other [Write-in field]

Updated ESTA Eligibility Questions

Applicants may be inadmissible into the United States if they are determined 1) to have a communicable disease of public health significance; 2) to have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the applicant or others; 3) to have a history of a physical or mental disorder associated with behavior which posed a threat to the property, safety, or welfare of the applicant or others and which is likely to recur or lead to other harmful behavior; or 4) to be a drug abuser or addict.[7] The Department of Health and Human Services (HHS) and the Center for Disease Control (CDC) previously issued regulations that defined a "communicable disease of public health significance" by only listing eight specific diseases: active tuberculosis (TB), human immunodeficiency virus (HIV) infection, chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, infectious syphilis, and infectious leprosy (Hansen's disease).[8]

These eight communicable diseases are currently listed on the existing ESTA application. However, HHS/CDC have found that recent experience (including the Ebola outbreak of 2014) demonstrated that a fixed list of diseases does not allow the flexibility to rapidly respond to

[7] Medical examinations, including a physical and mental evaluation, to determine whether an applicant may have such a health-related condition are authorized under section 232 of the Immigration and Nationality Act (INA) (8 U.S.C. § 1222).
[8] Under sections 212(a)(1) and 232 of the INA and section 325 of the Public Health Service (PHS) Act (42 U.S.C. § 252), the HHS Secretary promulgates regulations to establish the requirements for the medical examination and to list the health-related conditions that make applicants ineligible for entry into the United States.

unanticipated emerging or re-emerging outbreaks of disease. The ability to rapidly respond requires an approach based on prospective risks and consequences instead of a static list that does not reflect the potential for future outbreaks of novel diseases. Therefore, HHS/CDC is adding the following disease categories to the current list of communicable diseases of public health significance:

1) Quarantinable, communicable diseases specified by Presidential Executive Order, as provided under Section 361(b) of the Public Health Service (PHS) Act;[9]

2) Any communicable disease that requires notification to WHO of an event that may constitute a public health emergency of international concern, pursuant to the revised IHR of 2005.

Consistent with this new guidance from HHS/CDC regarding communicable diseases, CBP is revising the ESTA application to reflect the current quarantinable, communicable diseases specified by any Presidential Executive Order under Section 361(b) of the PHS Act.[10]

The revised ESTA Application question is as follows:

Do you have a physical or mental disorder, or are you a drug abuser or addict, or do you currently have any of the following diseases (communicable diseases are specified pursuant to section 361(b) of the Public Health Service Act):

- Cholera;
- Diphtheria;
- Tuberculosis, infection;
- Plague;
- Smallpox;
- Yellow Fever;

[9] Public Health Service (PHS) Act (42 U.S.C. § 252),

[10] Executive Order 13295 of April 4, 2003, as amended by Executive Order 13375 of April 1, 2005 and Executive Order 13674 of July 31, 2014, contains the most recent list of quarantinable, communicable diseases, and includes the following:

1) cholera
2) yellow fever
3) plague
4) viral hemorrhagic fevers
5) diphtheria
6) infectious TB
7) smallpox
8) severe acute respiratory syndromes
9) influenza caused by novel or re-emergent influenza viruses that are causing, or have the potential to cause, a pandemic (e.g., avian H5N1 influenza virus).

- Viral Hemorrhagic Fevers, including Ebola, Lassa, Marburg, Crimean-Congo; and
- Severe acute respiratory illnesses capable of transmission to other persons and likely to cause mortality.

Privacy Impact Analysis

Authorities and Other Requirements

CBP will collect enhanced ESTA application information pursuant to Title IV of the Homeland Security Act of 2002;[11] and the Immigration and Nationality Act (INA), *as amended*.[12] These statutes authorize the Secretary of Homeland Security, in consultation with the Secretary of State, to "develop and implement a fully automated electronic travel authorization system to collect such biographical and other information as the Secretary of Homeland Security determines necessary to determine, in advance of travel, the eligibility of, and whether there exists a law enforcement or security risk in permitting, the alien to travel to the United States."[13]

On December 18, 2015, the President signed into law the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 as part of the Consolidated Appropriations Act of 2016. To meet the requirements of this new act, DHS is strengthening the security of the VWP through enhancements to the ESTA application and to the Nonimmigrant Visa Waiver Arrival/Departure Record (Form I-94W) form. Many of the provisions of the new law became effective on the date of enactment of the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015. The Act generally makes certain nationals of VWP countries ineligible (with some exceptions) from traveling to the United States under the VWP if the applicant is also a national of, or at any time on or after March 1, 2011, was present in Iraq, Syria, a designated state sponsor of terrorism (currently Iran, Sudan, and Syria),[14] or any other country or area of concern as designated by the Secretary of Homeland Security.[12]

Under the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, the Secretary of Homeland Security may waive these new VWP travel restrictions if the Secretary determines that such a waiver is in the law enforcement or national security interests of

[11] 6 U.S.C. § 201, *et seq*.
[12] 8 U.S.C. § 1187(h)(3)(A).
[13] Implementing regulations for ESTA are contained in Part 217, title 8, Code of Federal Regulations.
[14] Countries determined by the Secretary of State to have repeatedly provided support for acts of international terrorism are generally designated pursuant to three laws: section 6(j) of the Export Administration Act of 1979 (50 U.S.C. § 2405); section 40 of the Arms Export Control Act (22 U.S.C. § 2780); and section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. § 2371).
[12] The Act establishes exceptions to the bar for travel to Iraq, Syria, Iran, and Sudan since March 1, 2011 for individuals determined by the Secretary of Homeland Security to have been present in these countries, "(i) in order to perform military service in the armed forces of a [VWP] program country; or (ii) in order to carry out official duties as a full time employee of the government of a [VWP] program country." 8 U.S.C. § 1187(a)(12)(B).

the United States. Whether ESTA applicants will receive a waiver will be determined on a case-by-case basis, in accordance with policy and operations guidance. DHS is currently planning to consider waivers to applicants only through the ESTA process and does not plan to make these waivers available to those who apply for admission under the VWP at land border ports of entry.

The combined totality of existing and newly proposed ESTA data elements will help CBP meet the requirements of the VWP Improvement and Terrorist Travel Prevention Act of 2015, mitigate the foreign fighter threat, and facilitate lawful travel under the VWP.

Characterization of the Information

CBP is expanding the data elements collected as part of the ESTA application to issue a travel authorization and to assess the potential risks each applicant poses with regard to the law enforcement or national security interests of the United States.

Mandatory Data Elements

With the publication of this PIA, CBP is notifying the public of new data elements added to the ESTA application and to the Form I-94W. The mandatory data elements that an applicant must now complete are indicated by a red asterisk on the ESTA website[13] and listed below. The new data elements are indicated by an (*):

- Family name;
- First (given) name;
- Birth date (day, month, and year);
- Country of birth;
- Sex (male or female);
- Country of citizenship;
- Country where you live;
- Passport number;
- Passport issuing country;
- Passport issuance date (day, month, and year);
- Passport expiration date (day, month, and year);
- Other Names or Aliases;

[13] https://esta.cbp.dhs.gov/esta/application.html?execution=e1s1.

- Other Country of Citizenship;
  - If yes, passport number on additional citizenship passport;
- City of Birth;
- Home Address;
- Parents' Names;
- Email;
- Telephone Number;
- National Identification Number;
- Current Job Title;
- Current or Previous Employer Name;
- Current or Previous Employer Address;
- Current or Previous Employer Telephone Number;
- Emergency Point of Contact Information Name;
- Emergency Point of Contact Information Phone;
- Emergency Point of Contact Information Email;
- U.S. Point of Contact Name;
- U.S. Point of Contact Address; and
- U.S. Point of Contact Telephone Number.
- Previous Countries of Travel*
- Dates of Previous Travel*
- Countries of Previous Citizenship*
- Other Current or Previous Passports*
- Visa Numbers*
- Laissez-Passer Numbers*
- Identity Card Numbers*

Voluntary Data Elements

In addition to the new mandatory information and eligibility questions, applicants have the option of providing additional voluntary data elements to complete their application.

Privacy Impact Analysis: Characterization of Information

Privacy Risk: There is a risk that the new eligibility questions collect more information than necessary to meet the statutory requirements of ESTA.

Mitigation: The new eligibility questions are narrowly tailored toward those individuals who have traveled to four countries specified in the statute, thereby mitigating the risk of over-collection. These questions inquire about past travel to particular countries or regions, specifically since March 1, 2011. These questions also seek contextual information about the nature of the travel, which may identify travel partners or affiliations (organizations or entities providing sponsorship). These questions improve the ability of CBP to identify persons requiring additional screening or consideration prior to travel to the United States, and will help inform the Secretary of Homeland Security on whether a waiver of VWP travel restrictions for any individual is in the law enforcement or national security interests of the United States.

Privacy Risk: There is a risk that CBP will make determinations about travel applications based on inaccurate information.

Mitigation: Because information is collected directly from applicants, CBP presumes this information is accurate. If an individual is denied travel via ESTA, they are still eligible to apply for a visa from the U.S. Department of State.

Uses of the System and the Information

CBP's use of the information in the traveler's ESTA application has not changed. CBP will continue to use the information submitted as part of an ESTA application to determine the eligibility of a foreign national to travel to the United States and to determine whether the visitor poses a law enforcement or security risk to the United States.[15] CBP will continue to vet the ESTA applicant information against selected security and law enforcement databases at DHS, including but not limited to TECS[16] (not an acronym) and the Automated Targeting System[17] (ATS). ATS also retains a copy of ESTA application data to identify potential high-risk ESTA applicants. CBP may also vet ESTA application information against other federal security and law enforcement databases to enhance CBP's ability to determine whether the applicant poses a

[15] *See* 8 U.S.C. § 1187(h)(3).
[16] DHS/CBP-011 U.S. Customs and Border Protection TECS (73 Fed. Reg. 77778, December 19, 2008).
[17] DHS/CBP-006 Automated Targeting System (77 Fed. Reg. 30297, May 22, 2012).

security risk to the United States or is eligible to travel to and enter the United States under the VWP.

Privacy Impact Analysis: Uses of the System and the Information

Privacy Risk: None.

Retention

The CBP retention period for ESTA has not changed. CBP retains ESTA application data for no more than three years in an active database (one year beyond the ESTA authorization expiration date) and twelve years in archive status.

Privacy Impact Analysis: Retention

Privacy Risk: None.

Internal Sharing and Disclosure

No changes have been made to internal sharing and disclosure.

Privacy Impact Analysis: Internal Sharing and Disclosure

Privacy Risk: None.

External Sharing and Disclosure

No changes have been made to external sharing and disclosure. CBP will continue to share ESTA information in bulk with other federal counterterrorism partners (e.g., the National Counterterrorism Center), and CBP may share ESTA on case-by-case basis to appropriate state, local, tribal, territorial, foreign, or international government agencies. Existing external information sharing and access agreements will continue and will now include the expanded categories of records noted above.[18]

Privacy Impact Analysis: External Sharing and Disclosure

Privacy Risk: None.

[18] This sharing takes place after CBP determines that the recipient has a need to know the information to carry out functions consistent with the exceptions under the Privacy Act of 1974, 5 U.S.C. § 552a(b), and the routine uses set forth in the ESTA SORN. Additionally, for ongoing, systematic sharing, CBP completes an information sharing and access agreement with federal partners to establish the terms and conditions of the sharing, including documenting the need to know, authorized users and uses, and the privacy protections for the data.

Notice

The System of Records Notice (SORN) for ESTA, last published on November 3, 2014, is being updated concurrently with this PIA to reflect the ESTA enhancements, including the new eligibility questions and additional data elements on the ESTA application.

Due to the sensitive national security concerns necessitating the expanded information collection required by the Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015, CBP has determined that the updated ESTA SORN will become effective upon publication, without a prior comment period. Despite the exigent circumstances requiring immediate publication and implementation of this new information collection, members of the public are still encouraged to submit comments on the updated SORN. CBP will evaluate these comments to determine if any future changes should be made.

Privacy Impact Analysis: Notice

Privacy Risk: There is a risk that associates or affiliates of the ESTA applicant will not be aware of their inclusion on the ESTA application or their exposure to CBP vetting of the ESTA application.

Mitigation: This risk is partially mitigated for these associates and affiliates. As stated above, the publication of the updated ESTA SORN in the Federal Register will provide general notice that this information may be collected. Additionally, the publication of this PIA expands the notice regarding the possibility of this information collection; however, these third party individuals will not receive direct notice of the collection in a manner similar to the ESTA applicant.

Individual Access, Redress, and Correction

The ESTA enhancements will result in CBP denying some individuals eligibility for a travel authorization under the VWP. Applicants denied a travel authorization to the United States via ESTA may still apply for a visa from the U.S. Department of State. General complaints about treatment can be made to the DHS Traveler Redress Inquiry Program (TRIP), 601 South 12th Street, TSA-901, Arlington, VA 22202-4220 or online at www.dhs.gov/trip. Generally, if a traveler believes that CBP actions are the result of incorrect or inaccurate information, then inquiries should be directed to:

CBP INFO Center
OPA - CSC - Rosslyn
U.S. Customs and Border Protection
1300 Pennsylvania Ave, NW
Washington, D.C. 20229

In addition, CBP has updated the address to which individuals should submit their requests for access and correction. Under the Privacy Act and the Freedom of Information Act (FOIA), individuals may request access to the information they provide which is maintained in the applicable CBP system of record. Proper written requests under the Privacy Act and FOIA should be addressed to:

CBP FOIA Headquarters Office
U.S. Customs and Border Protection
FOIA Division
90 K Street NE, 9th Floor
Washington, D.C. 20002

Requests for access should conform to the requirements of 6 CFR Part 5, which provides the rules for requesting access to Privacy Act records maintained by CBP. The envelope and letter should be clearly marked "Privacy Act Access Request." The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury.

Privacy Impact Analysis: Individual Access, Redress, and Correction

Privacy Risk: There is a risk that individuals will not have a means to contest ESTA denials or revocations.

Mitigation: Individuals who are denied an ESTA travel authorization may still apply for a visa at a U.S. embassy or consulate. In addition, the Secretary of Homeland Security has discretion to grant a waiver of VWP travel restrictions for some individuals if in the law enforcement or national security interests of the United States.

If an individual believes that he or she has been improperly denied an ESTA, he or she is still eligible to apply for a visa from the U.S. Department of State.[19]

Technical Access and Security

No changes have been made to technical access or security.

Privacy Impact Analysis: Technical Access and Security

Privacy Risk: None.

[19] The law does not permit an appeal for ESTA denial or revocations. *See* 8 CFR § 217(g) ("In the case of an alien denied a waiver under the program by reason of a ground of admissibility . . . that is discovered at the time of the application for the waiver or through [ESTA], the alien may apply for a visa . . . There shall be no other means of administrative or judicial review of such a denial, and no court or person otherwise shall have jurisdiction to consider any claim attacking the validity of such a denial.")

Technology

No changes have been made to the existing technology.

Privacy Impact Analysis: Technology

Privacy Risk: None.

Responsible Officials

Suzanne Shepard, Director ESTA
U.S. Customs and Border Protection
Department of Homeland Security

John Connors, CBP Privacy Officer
U.S. Customs and Border Protection
Department of Homeland Security

Approval Signature

Original signed copy on file with the DHS Privacy Office.

_____

Karen L. Neuman
Chief Privacy Officer
Department of Homeland Security

JOINT COMMENTS OF
AIRLINES FOR AMERICA,
THE INTERNATIONAL AIR TRANSPORT ASSOCIATION,
THE REGIONAL AIRLINE ASSOCIATION, AND
THE NATIONAL AIR CARRIER ASSOCIATION

Docket CDC-2020-0013

ATTACHMENT 9

U.S. Department of Homeland Security
Washington, DC 20229

U.S. Customs and Border Protection

DEC 18 2009

Ms. Barbara Kostuk
Managing Director of Passenger Facilitation
Air Transport Association
1301 Pennsylvania Avenue, NW
Suite 1100
Washington, DC 20004

Dear Ms. Kostuk:

This letter is to provide the Air Transport Association and its member carriers with 30 days advance notice of U.S. Customs and Border Protection's (CBP) intent to implement the enforcement strategy for the Electronic System for Travel Authorization (ESTA) for Visa Waiver Program (VWP) travelers.

As we move forward on meeting the requirements for the 9/11 Commission Act of 2007 (9/11 Act), it is necessary to transition to the next phase of our enforcement strategy. On November 13, 2008, Department of Homeland Security (DHS) published a notice in the Federal Register implementing mandatory compliance with the ESTA requirement for all VWP travelers effective January 12, 2009. In response to VWP traveler concerns over the new requirement and carrier concerns over implementing requisite system modifications, DHS elected to implement a period of informed compliance at that time.

Since then, the overall ESTA compliance rate for VWP travelers arriving by air has been approximately 91 percent. CBP officers have been addressing noncompliance by providing VWP travelers lacking travel authorization via ESTA advisory "tear sheets", verbally advising travelers of the ESTA requirement, and admitting them under the VWP if otherwise admissible. I would like to take this opportunity to remind carriers that individuals who possess a valid visa will still be able to travel to the United States on that visa for the purpose for which it was issued. Individuals traveling on valid visas are not required to obtain an approved travel authorization via ESTA.

For carriers who are not Advance Passenger Information System (APIS) Quick Query (AQQ)/APIS Interactive enabled, an alternative method is available for receiving a traveler's ESTA status. For non-interactive carriers, the Electronic Advance Passenger Information System (eAPIS), a CBP web portal for submitting APIS transmissions, has the ability to display travelers' ESTA status through a user's secure log in. Carriers can contact their APIS Account Managers or send an email to eAPIS.support@dhs.gov in order to obtain the functionality to view ESTA results in eAPIS.

Over the next few months, CBP will:

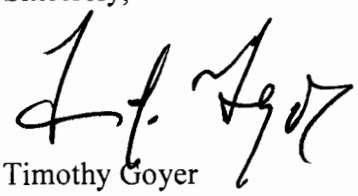
- Announce and implement January 20, 2010 as date of Enforced Compliance.
- Provide airlines with a 60-day transition period, effective through March 20, 2010.
- Provide violation data to carriers on a monthly basis during this transition period. Penalties for airline failure to comply with ESTA during the transition period will not be assessed.
- Issue warning letters to carriers not receiving and validating ESTA status messages, requiring such carriers to continue providing Form I-94W to their VWP passengers.

After the 60-day notice, carriers will be subject to penalties for boarding VWP travelers without travel authorization via ESTA. In addition, carriers unable to complete the necessary system modifications or use the eAPIS capability are subject to loss of VWP signatory status.

DHS, the Department of State, and the Department of Commerce will continue to pursue an aggressive ESTA outreach campaign. CBP will also increase outreach materials to include newspaper and online advertisements. Carriers are strongly urged to support this effort and inform their VWP customers of the ESTA requirement. CBP officers at the ports of entry will continue to notify VWP travelers of the ESTA program.

Customs and Border Protection values our longstanding partnership and relies on your leadership to join us in conveying this critical information to your travelers. Thank you in advance for your support in this important initiative. If you have any questions or concerns, please contact Suzanne Shepherd, Acting Director, ESTA, at (202) 344-2073.

Sincerely,



Timothy Goyer
Executive Director
Admissibility and Passenger Programs
Office of Field Operations

JOINT COMMENTS OF
AIRLINES FOR AMERICA,
THE INTERNATIONAL AIR TRANSPORT ASSOCIATION,
THE REGIONAL AIRLINE ASSOCIATION, AND
THE NATIONAL AIR CARRIER ASSOCIATION

Docket CDC-2020-0013

ATTACHMENT 10

Official Website of the Department of Homeland Security

EVUS

FREQUENTLY ASKED QUESTIONS

If you are looking for more information about the EVUS enrollment process or to review the Frequently Asked Questions, please explore the help topics below.

Expand All / Collapse All

MOST POPULAR QUESTIONS

- What is the Electronic Visa Update System?
- Who is required to enroll with EVUS?
- Why do I need to enroll with EVUS if I already have a Visa?
- What is the difference between EVUS and a Visa?
- Does it cost anything to enroll with EVUS?
- How long will my EVUS enrollment be valid for?
- Who will have access to my data and how will the U.S. Government protect my privacy?
- Does a Successful EVUS enrollment guarantee admission to the United States?
- How to renew EVUS?
- When I enroll with EVUS, how will I know whether I am Enrolled?
- Is my information secure?
- What is the process to enroll for a group of travelers?

Who is required to enroll with EVUS?

Citizens and nationals of the People's Republic of China (PRC): - Who have a 10-year U.S. visitor Visa, class B1, B2 or B1/B2; and - Plan to travel to the United States for short term business or pleasure.

ABOUT EVUS

GETTING STARTED

PRIVACY AND SECURITY EVUS

COMPLETING YOUR EVUS ENROLLMENT

UPDATING YOUR INFORMATION

SUBMITTING A GROUP OF ENROLLMENTS

CHECKING YOUR EVUS STATUS

TRAVELING WITH AN EVUS

TROUBLESHOOTING

For additional inquiries about the EVUS Enrollment process, visit the EVUS CALL CENTER

EVUS CALL CENTER

Email: **evus@cbp.dhs.gov**

Call: **00-1-202-325-0180**
24 hours per day, 7 days a week

HELPFUL LINKS

Dept. of Homeland Security:
DHS.gov
Customs and Border Protection:
CBP.gov
CBP.gov/travel

Paperwork Reduction Act Statement: An agency may not conduct or sponsor an information collection and a person is not required to respond to this information unless it displays a current valid OMB control number. The control number for this collection is 1651-0139. The estimated average time to complete this enrollment is 20 minutes. If you have any comments regarding this burden estimate, you can write to U.S. Customs and Border Protection, Office of Regulations and Rulings, 90 K Street, NE, 10th Floor, Washington DC 20229. **Expiration March 31, 2020**

EVUS

FREQUENTLY ASKED QUESTIONS

If you are looking for more information about the EVUS enrollment process or to review the Frequently Asked Questions, please explore the help topics below.

Expand All / Collapse All

MOST POPULAR QUESTIONS

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- Does a Successful EVUS enrollment guarantee admission to the United States?
- How to renew EVUS?
- When I enroll with EVUS, how will I know whether I am Enrolled?
- Is my information secure?
- What is the process to enroll for a group of travelers?

Why do I need to enroll with EVUS if I already have a Visa?

Enrolling with EVUS is a requirement under U.S. Immigration law if you are traveling to the United States for temporary business or tourism with a U.S. visitor Visa, class B1, B2 or B1/B2.

ABOUT EVUS

- What is the Electronic Visa Update System?
- Who is required to enroll with EVUS?

If I have made travel plans, when should I enroll with EVUS?

You may enroll at any time prior to travel to the United States. The Department of Homeland Security recommends that travelers enroll in EVUS at least 72 hours prior to travel. Unless revoked, EVUS are valid for two years from the date of authorization, or until 6 months from when your Passport expires, or until your U.S. Visa expires.

EVUS

UPDATING YOUR INFORMATION

SUBMITTING A GROUP OF ENROLLMENTS

CHECKING YOUR EVUS STATUS

TRAVELING WITH AN EVUS

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For additional inquiries about the EVUS Enrollment process, visit the EVUS CALL CENTER

EVUS CALL CENTER

Email: **evus@cbp.dhs.gov**

Call: **00-1-202-325-0180**
24 hours per day, 7 days a week

HELPFUL LINKS

Dept. of Homeland Security:
DHS.gov
Customs and Border Protection:
CBP.gov
CBP.gov/travel

SITE POLICIES

ACCESSIBILITY

PRIVACY STATEMENT

Paperwork Reduction Act Statement: An agency may not conduct or sponsor an information collection and a person is not required to respond to this information unless it displays a currently valid OMB control number. The control number for this collection is 1651-0139. The estimated average time to complete this enrollment is 20 minutes. If you have any comments regarding this burden estimate, you can write to U.S. Customs and Border Protection, Office of Regulations and Rulings, 90 K Street, NE, 10th Floor, Washington DC 20229. **Expiration March 31, 2020**

JOINT COMMENTS OF
AIRLINES FOR AMERICA,
THE INTERNATIONAL AIR TRANSPORT ASSOCIATION,
THE REGIONAL AIRLINE ASSOCIATION, AND
THE NATIONAL AIR CARRIER ASSOCIATION

Docket CDC-2020-0013

ATTACHMENT 11

U.S. Department
of Transportation
Federal Aviation
Administration

SAFO

Safety Alert for Operators

SAFO 20003
DATE: 3/12/20

Flight Standards Service
Washington, DC

http://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/safo

A SAFO contains important safety information and may include recommended action. SAFO content should be especially valuable to air carriers in meeting their statutory duty to provide service with the highest possible degree of safety in the public interest. Besides the specific action recommended in a SAFO, an alternative action may be as effective in addressing the safety issue named in the SAFO.

Subject: COVID-19: Interim Health Guidance for Air Carriers and Crews.

Purpose: This SAFO cancels and replaces SAFO 20001 and provides interim health guidance from the Centers for Disease Control and Prevention (CDC) and the Federal Aviation Administration (FAA) for Air Carriers and Crewmembers regarding COVID-19. The CDC and FAA are providing this health guidance for air carriers and crews to protect crewmembers from exposure and reduce the risk of transmission of COVID-19 onboard aircraft or through air travel.

Background: The CDC is responding to an outbreak of respiratory illness (COVID-19) caused by a novel (new) coronavirus (SARS-CoV-2) that was first detected in Wuhan, Hubei Province, China, and which has now been detected in more than 100 locations internationally, including the United States. Air carriers and crews conducting flight operations that have a nexus to affected countries, as identified by the CDC, including the United States, should be particularly aware of potential exposure and follow the associated CDC and FAA health guidance.

Discussion: On January 30, 2020, the World Health Organization (WHO) declared that the outbreak of COVID-19 constitutes a Public Health Emergency of International Concern (PHEIC), and, on March 11, 2020, WHO characterized the outbreak of COVID-19 as a pandemic. The Secretary of the U.S. Department of Health and Human Services has declared that COVID-19 constitutes a public health emergency.

Although CDC publishes information on COVID-19 transmission internationally and domestically within the United States, because of the rapidly changing situation, this information cannot be relied on to accurately judge the risk to crewmembers in any given location. Therefore, FAA and CDC recommend that air carriers and crewmembers take precautions to avoid exposure to COVID-19 and to ensure crewmembers do not work while symptomatic, regardless of crewmembers' places of residence or flight itineraries. The strength of the global aviation system depends upon the health of air crewmembers.

Recommended Action: All U.S.-based air carriers and crewmembers and non-U.S.-based crewmembers on flights with a U.S. nexus should use the CDC and FAA health guidance in the attached appendix regarding practices for limiting the spread of COVID-19.
Air carriers should also review the CDC guidance for airlines and aircrew:
https://www.cdc.gov/quarantine/air/managing-sick-travelers/ncov-airlines.html

Contact: Questions or comments regarding this SAFO should be directed to the FAA Washington Operations Center, 202-267-3333.

APPENDIX

COVID-19: Interim Health Guidance from the Federal Aviation Administration and the Centers for Disease Control and Prevention for Air Carriers and Crews

Guidance for Flight and Cabin Crews on Passenger or Cargo Flights

Crew members who are on layovers internationally or in the United States should stay in their hotel rooms to the extent possible, limit their activities in public, and practice social distancing**.** Social distancing means avoiding crowded places, not going to mass gatherings, and, generally staying about 6 feet (2 meters) from others, when possible. This recommendation is made because COVID-19 is spreading in many countries around the world and also in the United States.

Crew members should also pay attention to their health at all times and remain in communication with their employer's occupational health program. If they develop fever, cough, or difficulty breathing, crew members should immediately self-isolate and be excluded from work on flights until cleared by public health authorities. Crew members with high-risk exposures to COVID-19 (defined as exposure to a sick household member or intimate partner, or providing care in a household to a person with a confirmed case of COVID-19) may also need to be excluded from work until no longer at risk for becoming infectious.

U.S.-based crews

While on a layover in the United States or internationally:

- Travel as a group in private transport provided by the air carrier when traveling between the airport and hotel.
    - Minimize contact with ground personnel and time in public areas while moving between the aircraft and the private transport.
    - Do not use public transportation, including when traveling between the airport and hotel.
- Stay in your hotel room to the extent possible.
- Minimize going out into the general population and use social distancing (maintain a distance of approximately 6 feet, if possible) whenever out in public. Avoid crowds, stores, sporting or mass entertainment events, and other situations likely to attract large numbers of people.
- Eat in your hotel room with either room service or delivery service. If in-room dining options are not available, eat at a restaurant located in the hotel. If not available at the hotel, eat at a restaurant located close to the hotel.
- Avoid contact with sick people.
- Wash your hands often with soap and water for at least 20 seconds or use at least a 60% alcohol-based hand sanitizer. Use soap and water when your hands are visibly soiled.
- Avoid touching your face.

While at your U.S. residence or home base:

- Be aware of the risk of COVID-19 in your local community.
- Follow guidance of your state or local health department.
- Avoid crowded places and use social distancing.
- Avoid contact with sick people.

- If you become sick, or have had a high-risk exposure to COVID-19, follow the guidance applicable to those situations in the *Monitor your health before, during, and after travel* section of this document, below.

Monitor your health before, during, and after travel:

- Know how to contact the state or local health department for your residence.
- Monitor your health condition, following the guidance provided by your employer's occupational health program.
    - During periods when you are working, take your temperature twice a day (morning and evening). Monitor yourself for fever, cough, or difficulty breathing.
        - Fever means feeling feverish OR having a measured temperature of 100.4 degrees F (38 degrees C) or higher.
    - At all other times, pay attention to your health. If you feel feverish or develop a cough or difficulty breathing, take your temperature.
    - Your employer's occupational health program also is recommended to check in with you periodically to make sure you are well.
- If you develop fever, cough, or difficulty breathing:
    - Stay home or in your hotel room and avoid contact with others.
    - Immediately report your symptoms to your employer's occupational health program.
        - Seek occupational health clearance before working your next flight segment. You or your employer's occupational health program should also get clearance from public health officials before you return to work.
    - If symptoms occur during flight, separate yourself from others following CDC's guidance, to the extent possible.
    - If you are at your residence, call your state or local health department or a doctor for medical advice before seeking care. Tell them your symptoms and that you work as a crewmember for an air carrier.
    - If you are in the United States, your employer's occupational health program should notify the state or local health department where you are located at the time. If you are at an international location, your employer should notify the public health authority for that location and help you get health care, as needed.
    - Your employer should also notify CDC if you worked one or more flight segments while symptomatic.
    - If you are sick, do not travel via jump seat, deadheading, or as a regular passenger.
    - Wash your hands frequently and use hand sanitizers.
- Notify your employer's occupational health program if you have a high-risk exposure to COVID-19, for example, if a member of your household is sick with COVID-19.

Your employer's occupational health program may choose to exceed these recommendations based on their own policies.

Crews based in other countries

While on a layover in the United States:

- Travel as a group in private transport provided by the air carrier when traveling between the airport and hotel.

    - Minimize contact with ground personnel and time in public areas while moving between the aircraft and the private transport.
    - Do not use public transportation, including when traveling between the airport and hotel.
- Stay in your hotel to the extent possible.
- Minimize going out into the general population and use social distancing (maintain a distance of approximately 6 feet, if possible) whenever out in public. Avoid crowds, stores, sporting or mass entertainment events, and other situations likely to attract large numbers of people.
- Eat in your hotel room with either room service or delivery service. If in-room dining options are not available, eat at a restaurant located in the hotel. If not available at the hotel, eat at a restaurant located close to the hotel.
- Avoid contact with sick people.
- Wash your hands often with soap and water for at least 20 seconds or use at least a 60% alcohol-based hand sanitizer. Use soap and water when your hands are visibly soiled.
- Avoid touching your face.

Monitor your health while on flights with a U.S. nexus or during layovers in the United States:

- Monitor your health condition, following the guidance provided by your employer's occupational health program.
    - Take your temperature twice a day (morning and evening). Monitor yourself for fever, cough or difficulty breathing.
        - Fever means feeling feverish OR having a measured temperature of 100.4 degrees F (38 degrees C) or higher.
    - Your employer's occupational health program also is recommended to check in with you periodically to make sure you are well.
- If you develop fever, cough, or difficulty breathing:
    - Stay in your hotel room and avoid contact with others.
    - Immediately report your symptoms to your employer's occupational health program.
        - Seek occupational health clearance before working your next flight segment. Your employer's occupational health program should also get clearance from public health officials before you return to work.
    - If symptoms occur during flight, separate yourself from others following CDC's guidance, to the extent possible.
    - Your employer's occupational health program should notify the state or local health department where you are located and help you get health care, as needed. Your employer should also notify CDC.
    - If you are sick, do not travel via jump seat, deadheading, or as a regular passenger.
    - Wash your hands frequently and use hand sanitizers.

Your employer's occupational health program may choose to exceed these recommendations based on their own policies. Also follow instructions from public health authorities in your country of residence.

Guidance for U.S. Air Carriers

Regardless of residence or travel history, crewmembers who have known exposure to persons with COVID-19 should be assessed and managed on a case-by-case basis. Crewmembers with high-risk exposures may need to be excluded from work.

Housing flight and cabin crews on layovers (in the United States or internationally):

- Arrange to move crewmembers as a group between the airport and the hotel aboard private ground transport that has been sanitized in advance. Advise your crews to avoid public transport unless it is an emergency.
- Arrange to house flight crews in hotels that are in close proximity to the airport. Ensure that the hotel rooms are sanitized in advance of the crews' arrival.
- Provide crew with at least a 60% alcohol-based hand sanitizer.
- Encourage crews to:
    - Avoid contact with sick people
    - Stay in their hotel rooms to the extent possible
    - Minimize going out into the general population
    - Use social distancing (maintain a distance of approximately 6 feet, if possible) whenever out in public
    - Avoid crowds, stores, sporting or mass entertainment events, and other situations likely to attract large numbers of people
    - Eat in their hotel rooms with either room service or delivery service. If in-room dining options are not available, they should eat at a restaurant located in the hotel. If not available at the hotel, they should eat at a restaurant located close to the hotel.
- Crewmembers may commute to their residence when they return to their home bases.

Supervising self-monitoring of flight and cabin crews:

- Develop a plan in the event a crewmember becomes symptomatic during an overnight layover.
    - Know how to contact public health authorities in locations where crew remain overnight.
        - Contact information for U.S. state and local health departments for COVID-19 is available at https://www.cdc.gov/coronavirus/2019-ncov/downloads/Phone-Numbers_State-and-Local-Health-Departments.pdf.
    - Provide information to crewmembers regarding medical facilities in the vicinity of cities in which crewmembers remain overnight.
- Develop a plan in the event a crewmember becomes symptomatic while in the crewmember's lodging or personal residence.
    - Ensure crewmembers know how to contact their state or local health department.
    - Advise crewmembers to notify their state or local health department if they become symptomatic, in addition to reporting to the employer's occupational health program.
- Crewmembers may continue to work flight segments as long as they remain asymptomatic.
- Supervise crewmembers self-monitoring of their health condition through the air carrier's occupational health program.
    - Direct crewmembers to take their temperature twice daily during periods when they are working.

        - Consider providing crewmembers with thermometers.
    - Remind crewmembers to immediately report a fever, cough, or any difficulty breathing.
    - Check in with crewmembers periodically to make sure they continue to self-monitor and are not symptomatic.
    - Ensure crewmembers are asymptomatic before they board a flight.
- Crewmembers who are symptomatic with fever, cough or difficulty breathing should not work subsequent flight segments until they have been cleared by occupational health and public health officials.
    - Notify the state or local health department where the crewmember is located at the time (if the crewmember is located in the United States). If the crewmember is in an international location, notify the public health authority for that location.
    - Immediately report to CDC any crewmember who has a fever, cough, difficulty breathing, or other flu-like symptoms or is diagnosed with COVID-19 if the crew member worked one or more flight segments while symptomatic. Additionally, consult with CDC if a crewmember is identified to have a high-risk exposure to COVID-19, such as a sick household member with a confirmed or suspected case of COVID-19.
        - Contact CDC by calling the CDC quarantine station with jurisdiction for the airport where the crewmember is located or by calling the CDC Emergency Operations Center at 770-488-7100.
        - CDC can also assist in contacting state or local health departments or foreign public health authorities, if needed.

The U.S. air carrier occupational health program may choose to exceed these recommendations based on their own policies.

Guidance for Foreign Air carriers Operating in the United States

Housing flight and cabin crews on layovers in the United States:

- Arrange to move crewmembers as a group between the airport and the hotel aboard private ground transport that has been sanitized in advance. Advise your crews to avoid public transport unless it is an emergency.
- Arrange to house flight crews in hotels that are in close proximity to the airport. Ensure that the hotel rooms are sanitized in advance of the crews' arrival.
- Encourage crews to:
    - Avoid contact with sick people
    - Stay in their hotel rooms to the extent possible
    - Minimize going out into the general population
    - Use social distancing (maintain a distance of approximately 6 feet, if possible) whenever out in public
    - Avoid crowds, stores, sporting or mass entertainment events, and other situations likely to attract large numbers of people
    - Eat within their hotel rooms with either room service or delivery service. If in-room dining options aren't available, they should eat at a restaurant located in the hotel. If not available at the hotel, they should eat at a restaurant located close to the hotel.

Supervising self-monitoring of flight and cabin crews on flights with a U.S. nexus and during layovers in the United States:

- Establish contact with U.S. state or local health departments responsible for airports at which the airline operates.
    - Contact information for U.S. state and local health departments for COVID-19 is available at https://www.cdc.gov/coronavirus/2019-ncov/downloads/Phone-Numbers_State-and-Local-Health-Departments.pdf.
    - The CDC quarantine station responsible for the airport can also help establish contact with the health department.
    - Follow any instructions of the health department for what to do if any of your crewmembers become sick while on a layover at that airport.
- Crewmembers may continue to work flight segments with a U.S. nexus as long as they remain asymptomatic.
- Supervise crewmembers self-monitoring of their health condition through the air carrier's occupational health program.
    - Direct crewmembers to take their temperature twice daily.
    - Remind crewmembers to immediately report a fever, cough, or any difficulty breathing.
    - Check in with crewmembers periodically to make sure they continue to self-monitor and are not symptomatic.
    - Ensure crewmembers are asymptomatic before they board a flight with a U.S. nexus.
- Crewmembers who are symptomatic with fever, cough or difficulty breathing should not work subsequent flight segments until they have been cleared by occupational health and public health officials.
    - Immediately notify the state or local health department responsible for the airport and CDC.
        - Contact CDC by calling the CDC quarantine station responsible for the airport or you can call the CDC Emergency Operations Center at 770-488-7100.
        - CDC can also assist in contacting the state or local health department, if needed.

The foreign air carrier occupational health program may choose to exceed these recommendations based on their own policies.

JOINT COMMENTS OF
AIRLINES FOR AMERICA,
THE INTERNATIONAL AIR TRANSPORT ASSOCIATION,
THE REGIONAL AIRLINE ASSOCIATION, AND
THE NATIONAL AIR CARRIER ASSOCIATION

Docket CDC-2020-0013

ATTACHMENT 12

AIR TRANSPORT ASSOCIATION

Ms. Jennifer Brooks
Centers for Disease Control and Prevention
Division of Global Migration and Quarantine
1600 Clifton Road, N.E. (E03)
Atlanta, GA 30333

Re: Control of Communicable Diseases ("Q Rule")

Dear Ms. Brooks:

The Air Transport Association of America, Inc. ("ATA") represents the major commercial airlines in the United States.[1] On behalf of its members, ATA respectfully submits the following comments on the Notice of Proposed Rulemaking ("NPRM") regarding Control of Communicable Diseases, published in the Federal Register on November 30, 2005.[2]

I. INTRODUCTION

In proposing to "update existing regulations related to preventing the introduction, transmission, or spread of communicable diseases," the Centers for Disease Control and Prevention ("CDC") is undertaking the task of modernizing, streamlining and clarifying requirements that in many cases have been in place for decades but rarely (if ever) invoked in recent times. In particular, harmonizing the provisions applicable to interstate activities (42 C.F.R. part 70) with those applicable to foreign arrivals (42 C.F.R. part 71)

[1] ATA airline members are: ABX Air, Inc., Alaska Airlines, Inc., Aloha Airlines, American Airlines, Inc., ASTAR Air Cargo, Inc., ATA Airlines, Inc., Atlas Air, Inc., Continental Airlines, Inc., Delta Air Lines, Inc., Evergreen International Airlines, Inc., FedEx Corporation, Hawaiian Airlines, JetBlue Airways Corp., Midwest Airlines, Inc., Northwest Airlines, Inc., Southwest Airlines Co., United Airlines, Inc., UPS Airlines, US Airways, Inc. ATA Airline Associate Members are: Aeromexico, Air Canada, Air Jamaica Ltd., and Mexicana.

[2] 70 Fed. Reg. 71892 (Nov. 30, 2005).

will simplify compliance for those airlines[3] that operate both domestically and internationally.

In several significant respects, however, the NPRM greatly exceeds the stated intent to *update existing* regulations by imposing *entirely new and unprecedented* regulatory requirements on one sector of private industry: commercial passenger airlines that provide scheduled service. In particular, the proposed requirements regarding the collection, storage and transmission of passenger data represent an unwarranted and insupportable burden on an industry sector that can ill-afford it, without adequate discussion or consideration of alternatives that could accomplish the same public health goals with greater efficiency and at less cost.

Similarly, the NPRM adds a new requirement for airlines to disseminate public health information, and expands the long-standing requirement for airports to provide space for carrying out federal quarantine responsibilities to include space suitable for the quarantine of large groups of passengers and crew for extended periods, thereby imposing another significant burden on the air transportation sector without any consideration of costs or alternatives, as required under the Unfunded Mandates Reform Act, 2 U.S.C. § 1501, and other law.

In addition, the NPRM presents no strong evidence that scheduled air travel uniquely facilitates communication of disease, begging the question of why airlines and cruise ships have been singled out for massive regulation and associated costs. The exclusion of non-scheduled operations is confounding, particularly as much of the international passenger service is conducted by charter operators. No other mode or sector has been similarly targeted despite ample evidence that disease can be spread in the course of travel on buses, subways and ferries, or in casinos, theaters, offices, and other settings. We urge CDC to refocus its proposed rulemaking to include all modes and settings where

[3] In industry parlance and under other laws, "air carrier" or "carrier" is used to refer to an airline (i.e., the company that operates the aircraft). The NPRM defines "airline" to include "air carrier," but also defines "carrier" to mean airline *or* aircraft. In the interest of clarity, these comments will use the terms "airline" to mean the corporate entity and "aircraft" to refer to the conveyance in paraphrasing or discussing the proposed provisions. We recommend that the definitions be revised to remove this ambiguity.

transmission of communicable disease may be a concern, and not to focus on airlines exclusively to protect the public health, which would be unfair, unlawful and discriminatory.

The Public Health Service Act and other legal authority discussed in the NPRM do not authorize regulations that are unnecessary, discriminatory or impose an unreasonable burden on airlines and, to the extent that certain provisions of the NPRM do so, ATA believes such provisions exceed CDC's authority. ATA urges CDC to revise its proposal to require only those measures appropriate to the current public health situation and necessary to enable a scaled response to future public health emergencies, and to refrain from embarking on extensive, costly and unjustified regulation of the airline industry.

We address each of these proposed requirements in detail below, along with proposed changes to existing provisions of 42 C.F.R. parts 70 and 71.[4] In addition, because many provisions of the existing regulations have been implemented so infrequently, we offer comments in some cases even where no change is proposed in the NPRM. Because of the scope and significance of proposed requirements relating to passenger information, we address that issue first. We also address the assumptions and conclusions of Regulatory Impact Analysis ("RIA") as it applies to the projected costs and benefits of the passenger information requirements in that section.[5] Next, we offer our views on the legal authority of CDC relative to interstate and intrastate airline operations. Other provisions are addressed in the general order in which they are presented in the NPRM, although we have grouped some related provisions out of sequence.

[4] All references are to Title 42 of the Code of Federal Regulations unless otherwise specified. Where there are parallel provisions in 42 C.F.R. part 70 and part 71 we address them together.

[5] ATA notes that the RIA cited in the NPRM and made available through the rulemaking record is dated September 26, 2005 and is labeled "Draft – Do Not Copy or Cite." It is unclear what the implications of relying on a draft analysis might be for the NPRM itself, and we question whether the analysis was in fact subjected to sufficient internal agency review and approval prior to its use in developing the NPRM. In any case, these comments will cite only to the Federal Register notice, and not to the Draft RIA in accordance with those instructions.

II. PASSENGER INFORMATION

Proposed §§ 70.4, 70.5, 71.10 and 71.11 would impose sweeping new requirements on airlines to solicit, retain, and transmit passenger and crew data.[6] The requirements would apply to U.S. *and* foreign flag airlines that provide scheduled service on international or interstate flights operating into any medium or large hub U.S. airport.[7] Some of the data that airlines would be required to solicit from passengers and crewmembers would go well beyond data currently collected for other governmental purposes or for commercial reasons and, as further detailed below, may conflict with foreign data privacy laws. Even more problematic, CDC reserves its authority to order the airline to transmit additional (but undefined) data in its possession when necessary.

CDC proposes that data collected must be retained in an electronic database for 60 days from the end of the flight, and upon request from the CDC, the airline must transmit the data electronically within 12 hours.[8] This requirement alone represents a significant change from the current system, under which airlines may house data in different locations, and not all data is stored electronically or in the same format. For example, information on crew members and nonrevenue passengers (*e.g.*, persons traveling on passes) typically is kept in a separate record system.

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[6] Specifically, the CDC seeks to require the collection and retention of the following data elements: passenger's full name (first, last, middle initial, suffix); home address, phone number(s), e-mail address, traveling companion(s), "emergency contact information" [defined by CDC as the following information for a person or entity that can contact a passenger/crew member in case of emergency: Full name (first, last, middle initial, suffix), permanent address, phone number (home/work/mobile); "flight information" [defined by the CDC as: airline name (not airline code), flight number, city of arrival, date of arrival, date of departure, seat number for any passenger/crew member, arrival gate and arrival terminal]; returning flight information; passport number or travel document number (including the country of issuance for foreign nationals).

[7] The definition of "airline" at proposed § 70.1 covers "any air carrier, foreign or domestic, operating commercial passenger flights under regular schedules within the United States," while proposed §71.1 uses the same definition with the exception of the last clause, which reads "arriving in or departing from the United States. Putting aside the question of whether any foreign air carrier could, under existing law on cabotage, operate "within the United States," the definition excludes non-scheduled (i.e., charter and itinerant operations).

[8] The NPRM does not define "electronic database" or "electronic format." ATA assumes that the intent is to develop a single format, as discussed below, to allow CDC to receive electronic transmissions from all entities potentially subject to this requirement.

In many respects, CDC's proposals regarding collection and transmission of passenger information overlaps with or duplicates other efforts underway at the Department of Homeland Security ("DHS"): in particular, Advanced Passenger Information Quick Query ("AQQ"), under development by the Bureau of Customs and Border Protection ("CBP"), and the Transportation Security Administration's ("TSA") Secure Flight program or its successor.[9] In addition, some of the information requested is already collected under Department of Transportation ("DOT") regulations set forth at 14 C.F.R. part 243, although that regulation expressly precludes the data from being retained or shared with CDC**.**

Inexplicably, the NPRM includes no discussion of the Memorandum of Understanding ("MOU") recently executed between HHS and DHS. This MOU has not been made publicly available, but reportedly includes provisions for data sharing, including allowing CDC access to passenger information, including Passenger Name Records, through CBP. Although the NPRM's paperwork reduction analysis notes that CDC and DHS "are exploring options to reduce the potential burden of dual reporting" (70 Fed. Reg. 71925), there is no indication in the proposed regulations of how or when that might occur.

Until CDC has fully exhausted any possibility of receiving the data it requires from other U.S. government agencies it should suspend the passenger data collection element of this rulemaking. The staggering direct and indirect costs to airlines, passengers, intermediaries such as travel agents of CDC's proposed rule require that CDC not shift the burden of data solicitation, collection and storage to the travel industry and general public unless it can fully account for and justify all of these costs. This is necessary not only as a matter of public policy, but to satisfy the Office of Management and Budget ("OMB"), which must review all information collection requirements proposed by new regulations to validate that the burdens on the airline industry are justified and lawful. ATA urges CDC to defer any final action on this aspect of the NPRM until alternatives, including coordination with DHS and other federal departments and agencies, have been

[9] The CDC uniquely would require that airlines retain data that they may not require for commercial purposes beyond the end of a flight for an extended period after the end of the passenger's journey.

fully explored and evaluated with industry stakeholders. CDC, along with CBP, TSA, and any other relevant agencies must coordinate their activities and develop a single set of requirements for passenger information to ensure that airlines are not burdened with the cost of programming, collection and transmission under multiple systems.

The NPRM also ignores the substantial effort and significant achievement involved in the development of a passenger locator form ("PLF") since the outbreak of Severe Acute Respiratory Syndrome ("SARS") in 2003. As early as May 2003, representatives of CDC, the World Health Organization ("WHO"), ATA, the International Air Transport Association ("IATA") and the International Civil Aviation Organization ("ICAO") met to discuss ways to improve passenger contact tracing. Out of those initial conversations came an agreed-upon approach utilizing a machine-scannable format and standard data elements on a paper form to be completed by passengers and used in the event of a public health emergency with international implications.

CDC completed their version of this form, obtained clearance from the Office of Management and Budget, and distributed it to ATA members for use if directed by CDC. IATA more recently obtained approval from WHO for an international version of the PLF, and discussions about modifications to further harmonize and improve the forms are ongoing. While CDC may not consider this paper-based system ideal in the long-term, it represents a significant improvement over the situation experienced by CDC during the SARS outbreak when airlines express-mailed paper records to CDC, but CDC lacked the manpower to extract the relevant data from these records and transmit it efficiently to state health authorities.

Furthermore, and as discussed below, by failing to acknowledge the post-SARS improvements in passenger contact tracing the NPRM erroneously attributes greater benefit to the proposed system than it merits. The development of a machine-scannable form with consistent data elements would allow CDC to process this information far more rapidly, and provides an immediate mechanism for responding to outbreaks of disease. It also enables collection of information directly from passengers, thus avoiding

many practical and privacy concerns with requiring the airlines to collect such data.

As explained in greater detail below, this proposal constitutes an unwarranted financial and operational burden on certain segments of the airline industry and is unworkable on technical, legal and economic grounds. The airline industry simply cannot continually reprogram or create new computer systems to meet multiple uncoordinated government requirements. Passenger fatigue with government mandates unique to air travel is increasing. Moreover, any transfer of passenger information to government agencies raises privacy concerns both with U.S. citizens and foreign governments, and may in fact violate foreign laws – issues that can only be addressed at the federal level and must be consistently and fully settled before any rule becomes final. For all of the foregoing reasons, we believe it is essential that HHS and DHS coordinate closely on passenger information requirements for security and public health purposes.

In February 2006 a joint working group of ATA and IATA met in Atlanta to begin to identify shared concerns regarding provision of passenger information to government agencies and possible approaches to address them, including the "single window" concept under which airlines would send data to one agency, which in turn would be responsible for maintaining and protecting the data and disseminating the appropriate portions of the data to authorized government entities. This ATA/IATA working group, which is scheduled to meet for a second time in early March 2006 and which we anticipate will continue to meet on a regular basis, offers a forum for further discussion and exploration of potential solutions. While we believe it is premature to recommend a detailed substitute for the NPRM's proposed requirements pending further discussion among the relevant agencies, ATA believes that alternatives exist that would significantly reduce the burden on the airlines while still achieving CDC's public health goals. CDC should issue a new notice of proposed rulemaking following the completion of this process to avoid the proliferation of duplicative and conflicting requirements among federal departments and agencies and enable the public to comment on a more realistic and reasonable proposal.

A. Privacy Issues

CDC's passenger information collection and reporting proposal is unworkable and imposes an unjustified burden on not only airlines but passengers. In addition, and as indicated by many of the comments already received from private citizens, the proposal will not receive the cooperation of the general public. CDC discounts the potential for privacy concerns associated with the provision of personal data for public health purposes, and asserts that collection of this information "finds strong support in public opinions," based on a survey commissioned by CDC from the Harvard School of Public Health ("Harvard survey"). However, the NPRM's overall reliance on the results of the Harvard survey is misplaced.

The Harvard survey was conducted in June 2004, just one year after the well-publicized SARS outbreak which produced widespread public alarm about the threat of emerging diseases, and specifically mentioned SARS in many of the questions. The question that asked respondents whether they would be willing to provide personal information is prefaced by (and predicated on) the statement "If you had been on an airplane with someone who had a highly contagious disease, public health authorities would want to contact you as quickly as possible." This is akin to asking travelers whether, if they knew that one of their fellow passengers was carrying a bomb, they would be willing to be subjected to a full search at the security checkpoint. Asking if the respondent would be willing to provide the information on a speculative and prospective basis for each flight, on the remote chance that a particular flight might include someone in the communicable stage of a communicable disease with whom the respondent might have come in contact, might elicit a more realistic response.

Moreover, it appears that well over half of the respondents to the question asking how concerned they would be that the privacy of their emergency contact information would not be protected indicated that they would be very concerned or somewhat concerned.[10] This view is echoed in some of the comments already filed in the docket for the NPRM,

[10] ATA was unable to calculate the precise percentage due to insufficient information about the Harvard survey methods in the report provided to ATA.

which indicate that privacy concerns may in fact raise significant hurdles to CDC's proposal.[11]

Despite the fact that CDC's own contractor, Eastern Research Group, Inc. ("ERG"), noted that the proposal runs afoul of privacy law abroad, CDC's proposal completely disregards the impact of privacy laws in other countries. Airlines providing international service are placed airlines in an untenable position of being forced to choose between violating U.S. requirements or foreign laws to which they may also be subject. The most obvious example of a potential conflict with privacy concerns is with the European Union ("EU"), which imposes stringent requirements for protecting personal information, and particularly so-called "personal data" which includes home address, e-mail and telephone number, all of which the CDC proposal would cause airlines to solicit, retain and transmit to the CDC upon request. Under EU law, personal data can be collected only with the individual consent of the person to whom it belongs for the express purpose or use intended. In other words, provision of emergency contact information as proposed by CDC would also require the express consent of the individual listed as the contact, not just of the traveler. It would be a practical impossibility for airlines to obtain such consent from third parties.

The airline industry's recent experience with security requirements is instructive, and CDC should not assume that their rules would be met with a different response. It could be assumed that the public's interest in being protected against terrorist incidents is at least equal to its interest in being protected from serious health threats, yet post-9/11 security measures that involved sharing personal data with government agencies have met with significant opposition and concern from both U.S. citizens and foreign governments. DHS, through CBP, undertook lengthy negotiations with respect to requirements under U.S. law[12] for airlines to provide access to certain Passenger Name Record data for flights between the U.S. and EU member states. Those negotiations eventually produced a document containing a set of representations regarding the manner

[11] *See, e.g.,* Comments of the Electronic Privacy Information Center and joint comments submitted by Privacy Activism, Privacy Rights Clearinghouse, and the Fairfax County Privacy Council.
[12] 49 U.S.C. 44909 and implementing regulations at 10 C.F.R. 122.49b.

in which CBP would handle this data, which allowed the EU to make an "adequacy finding," and an international agreement executed by the European Council.[13] A recent opinion of the Advocate General of the European Court of Justice, however, throws into question not only the validity of that agreement and the adequacy finding but also leaves uncertain the correct EU interlocutor for agreements involving personal data. Airlines may, therefore, find themselves in their original position of being caught in a conflict between two applicable laws.

The NPRM states that "[a]irlines are expected to safeguard the confidentiality of the information collected" until such time as it may be requested by CDC. While airlines do have privacy policies in place, these privacy policies cannot ensure that the *government* would use the information it demands appropriately. Although CDC notes that it has a long history of managing sensitive data in a manner that protects confidentiality and privacy of the public, and proposes that it will create a records control schedule for data received from airlines (*see* 70 Fed. Reg. 71900), this may not be sufficient to satisfy privacy concerns, particularly with respect to the EU. Comments already in the docket make clear state and local public health authorities' and medical facilities' desire for data that may originate with airlines, raising another level of privacy concerns.

Moreover, privacy laws of multiple countries would have to be analyzed, since these laws may attach to data collected from a citizen of a particular country (or collected from that individual via telephone, travel agent or Internet reservation while that individual was in a particular country) even if the travel itself occurred elsewhere (*e.g.*, a German citizen providing information via telephone for a U.S. codeshare flight between Paris and New York might be covered under German privacy laws). These laws also pertain to data that is merely stored in EU member states, a potentially serious concern for airlines and GDSs that store data in member states. The CDC apparently has not yet fulfilled its obligation to perform and publish a Privacy Impact Assessment for this project as required by the E-government Act of 2002. ATA urges CDC to complete a PIA and looks forward to the opportunity to review it.

[13] *See* 69 Fed. Reg. 41543 (July 9, 2004).

Unless these requirements are harmonized, airlines are put in the untenable position of trying to comply with myriad and conflicting privacy laws and requirements, which likely would expose airlines to litigation for alleged violations of privacy laws of various countries. Complying with CDC or other federal government requirements would be objectionable to some other countries, which would be in the position to take enforcement action against airlines, and their nationals would likely be in the position to litigate against the airlines. CDC should coordinate with the U.S. State Department to harmonize these proposed requirements with other international privacy laws and regulations to avoid creating yet another legal quandary for airlines.

B. Scope of Data

Proposed §§ 70.4(e) and 71.10(e) would require airlines to solicit from each passenger not only their full name (first, last, middle initial and suffix) but also current home address (street, apartment #, city, state/province, postal code), at least one phone number (in order of preference: mobile, home, pager or work), e-mail address, emergency contact information (*i.e.*, the full name, address and phone for a person other than the passenger), passport/travel document number (for foreign nationals only), name(s) of traveling companion(s) or group, flight information (airline name, flight number, city of arrival, date of arrival, date of departure, seat number for any passenger or crewmember, arrival gate and arrival terminal), and returning flight (date, airline number and flight number). The proposed data elements are based on CDC's assessment of what information is useful in order to contact a person who may be traveling (*i.e.*, away from home). Their relative utility, according to CDC, is name, emergency contact, flight information, phone number, e-mail, home address, passport, traveling companions and return flight information, in that order.

Each of these elements must be assessed not only in terms of potential utility in contacting an individual, but also in terms of marginal utility (when seen in addition to other passenger data), availability, privacy, ease or difficulty of establishing standards for data entry, time required to provide (for the passenger or the passenger's representative) and record the information (for the airline, agent or traveler), and likelihood that the

information would be accurate or remain current. Airlines have no ability to validate data that would be required by CDC, or otherwise to ensure that it is correct and reliable for the public health purposes for which it would be collected. Based on the consistent experience of airlines in collecting extensive personal data, they also would experience substantial difficulty in obtaining passenger cooperation. Even if passengers were willing to provide personal data, many people would not have all of this information readily available at the time of booking or at the airport. This process will inevitably slow the process of purchasing air transportation and/or increase the time needed to check in for a flight at the airport, and would create enormous burdens on airlines and passengers alike.

The enormous information collection burdens on airlines and on passengers will be subject to OMB review. Before investing more resources in the formal rulemaking process for this proposal, CDC should carefully consider the comments received on this NPRM and craft a more reasonable and workable proposal based on those comments and on coordination with other government agencies. Interested parties should be given another opportunity to comment after this consideration takes place.

While the availability of some passenger information may depend in large part on the outcome of pending initiatives related to security, many data elements present obvious problems in other respects. The following are just some examples:

- Asking passengers to provide personal data about another person (*i.e.*, emergency contact) adds a level of complexity to compliance with European privacy laws that makes it infeasible and potentially illegal for an airline to carry out. Merely correctly identifying those to whom such data protections apply would be a staggering task.
- Identifying traveling companions is an extremely complicated issue, particularly where reservations have been made and tickets paid for separately.
- E-mail addresses are carefully guarded by many people as a means of protecting themselves against unsolicited e-mail or spam.
- Home addresses outside of the U.S. pose challenges because conventions for addresses vary considerably from country to country.
- Return flight information may be unavailable (many travelers make open-ended reservations even on a round-trip ticket) and is always subject to change. CDC's purpose in requiring return flight information is unclear. Moreover, it is unclear

what authority CDC would have to contact individuals who are no longer in the U.S., or whether the intent is to further share this personal data with the health authority in another country.

- Obtaining travel document information would present challenges unless it is limited to those individuals for whom this information is already collected for customs and immigrations purposes. Even if limited to foreign nationals, collecting this information on domestic flights, as required under proposed § 70.4(e)(5), would necessitate that airlines inquire about a passenger's citizenship status in a context where that information is otherwise irrelevant.
- Arrival gate (and in some cases arrival terminal) information generally is not determined until shortly before the flight departs, and even then is subject to change. It is unclear how CDC would use this information, or why it should be collected for each passenger on a given flight.

The NPRM does not make provision of any of this data mandatory – passengers who decline to furnish the information requested by the airline would not be prohibited from traveling (70 Fed. Reg. 71899). CDC assumes that travelers will be willing to provide this information voluntarily, but that assumption appears to be based almost entirely on the flawed Harvard survey, discussed above. The airline industry's experience with the DOT requirements, under which most of the data elements are optional, suggests otherwise. In a survey conducted by one member airline in January 2006, it found that less than one percent of a sample of over 500 passengers on three international flights provided the information sought in DOT's voluntary information collection procedure. We note that the information sought in the DOT requirement is far more limited than that which CDC seeks, and that the same member's experience with surveys generally shows that longer surveys enjoy lower completion rates.

In order to protect public health by making timely contact with individuals exposed to a serious communicable disease, CDC requires reliable and complete data on a relatively small number of people in an even smaller number of instances. Requiring the airlines to solicit information that is unlikely to be provided on any consistent basis, and create systems that can handle data fields that may never be filled in is over-regulation of the worst kind. The fact that the NPRM is based on the voluntary provision of data guarantees that airlines would be forced to collect massive amounts of information that will never be used while the data airlines receive and store may well be inaccurate or

insufficient to contact such individuals quickly. Simply put, a low voluntary compliance rate and/or provision by passengers of less-than-accurate information would destroy the purported benefit of the proposal.

Rather than unreflectively imposing a redundant system to collect data that already exist, CDC should reduce the burden on airlines and explore ways to use data already collected for other public purposes or commercial reasons. Data elements that do not clearly further CDC's stated goal of contacting passengers and crew members, such as arrival gate and return flight information, should be omitted altogether. CDC should evaluate the need for additional data based on the factors suggested above, and consider other means of obtaining data that might be desirable but cannot reasonably be collected, verified or maintained by airlines. By way of example, CDC should examine the Travel Registration program, which allows U.S. citizens to register information about their intended travel directly with the Department of State via the agency's web site (*see* https://travelregistration.state.gov/ibrs/). Use of the PLF or some other version of a paper-based, machine-scannable system should also be considered as an interim or supplemental measure to obtain data elements that are not otherwise readily available or that raise particularly sensitive privacy concerns. In both of these examples, information is provided by the passenger on a voluntary basis directly to the U.S. government, thus bypassing some of the privacy issues associated with the proposed rule.

C. Collection of Data

Under proposed §§ 70.4(h) and 71.10(h), airlines must ensure that passengers are informed of the purposes of collecting the information at the time they make their travel arrangements. This requirement is both impossible for airlines to guarantee given the many intermediaries that take travel reservations, and unlikely to yield the result that CDC appears to seek (*i.e.*, greater compliance on the part of passengers). Moreover, this requirement would add a significant amount of time, and hence cost, to the reservations process and would preclude efficient use of data that is already being collected for other purposes since it would introduce an additional and unnecessary step to the reservations process.

For data elements that also are required by other agencies, or that may be collected by airlines for their own purposes, requiring this additional step is simply a waste of time and effort. One can envision the almost-comical scene in which a passenger is first asked for his phone number for security purposes, then again for public health purposes, and again so that the airline can contact him in the event of a schedule change. For other data elements, requiring that passengers are informed of the purpose of collecting the information at the time of booking could give rise to protracted discussions between the passenger and the booking agent regarding specific health risks, and possible scenarios under which the information might employed, that airline employees and travel agents might be ill-equipped to handle.

Finally, the time required to adequately inform the passenger and answer ensuing questions could be many times that estimated in the RIA. One ATA member estimates that explaining and justifying the additional data request could take an additional *5-10 minutes*, instead of the 75-90 seconds assumed by CDC. This added time would significantly adversely impact airline operations as well as the public's ability to travel. For example, a 5-minute-per-passenger check in time could translate to a requirement for passenger to arrive at the airport several hours prior to flight departure in order to provide the additional information during check-in. Moreover, the cost of this requirement could be hundreds of millions of dollars. This represents an unacceptable burden on airlines and the traveling public, particularly when there are other available means to address public health emergencies with scaled responses and the continued cooperation of airlines in this process.

The requirement that passengers be informed of the purposes of collecting the information at the time they arrange their travel is not reflected in the RIA, which presents only two scenarios: collection of passenger data at point of sale ("POS") and at point of departure ("POD") (70 Fed. Reg. 71914, 71916). It is unclear whether by "point of sale" the RIA is referring to the same event as when "passengers arrange their travel," since passengers may make reservations well in advance of booking their ticket.

Moreover, the description of data collection under the POS scenario as "relatively invisible to the traveler," 70 Fed. Reg. 71914, is at odds with this requirement. However, it is clear that under the POD scenario, airlines would have to have informed the passenger of the purpose of collecting the data at some prior point and through another mechanism, adding additional costs and operational impacts.

Proposed §§ 70.4(g) and 71.10(g), requires that information collected solely in order to comply with the regulation may only be used for that purpose. Given the overlapping information requirement of other federal agencies, as well as the need for some of this data for customer service reasons, it is unlikely that airlines could easily segregate data collected solely for purposes of compliance with this rule. Furthermore, it is unclear what this requirement would accomplish. While passengers can be expected to have concerns about the use that their personal data might be put to by the government, airlines are not in a position to guarantee the use of the data for specific purposes once it is turned over to the CDC.

While the proposed rule itself does not prescribe the means by which this information would be collected, the RIA, as mentioned above, describes two possibilities. Neither scenario addresses collection of crew information, which could not reasonably be collected at either of these points and which is maintained and updated in a separate system. Under the POS scenario, CDC assumes that data would be gathered primarily by travel agents and/or Global Distribution Systems ("GDS") and shared with the airlines for storage and future retrieval. This is an unrealistic assumption, and ignores the strong competitive reasons that these companies might have for refusing to collect and/or to share this data or the costs associated with its collection, storage and transmittal.

Furthermore, airlines may have to pay GDSs for any data that is stored on their behalf, and may be required to negotiate an agreement for the format for data exchange, adding to the airlines' costs. Since the proposed requirements do not place travel agents and GDSs under any direct legal obligation, they would not be motivated to collect such data (due to associated costs) and would furthermore have a disincentive to provide valuable

marketing information to the airlines, which compete with them for this business. Also, without a legal compulsion to collect passengers' personal data, privacy laws in the countries where travel agents and GDSs are sited likely would limit or prohibit collection or data for ultimate dissemination to CDC.

Significantly more than half of total airline bookings are made through intermediaries such as travel agents and GDSs. Because these intermediaries would not be legally required to solicit, collect or share passenger information with the airlines under the NPRM, even under the POS scenario airlines could be placed in the position of having to solicit data at the point of departure if an agent has failed to do so during the booking process. Such a requirement would guarantee airport congestion and traveler confusion. It would also disadvantage airlines in two ways relative to agents in taking bookings: first through imposing the cost of soliciting information during reservations process for those that book through airlines (as opposed to agents who might chose not to bear this cost), and again through the direct and indirect costs of data solicitation for only some passengers at the point of departure.

Furthermore, the RIA ignores the airlines' in-house reservation sales, which include telephone and on-line services and can account for a significant portion of bookings. One ATA member reports that in 2005, its North American reservations center handled 51 *million* calls, and notes that not all phone calls with reservations agents result in an actual ticket purchase.

D. Data Storage, Retrieval and Transmission

Proposed §§ 70.4(b) and 71.10(b) would require that airlines retain data for 60 days after the end of a flight segment. In fact, this could require data to be kept in a readily-accessible format for upwards of one year, depending upon the point of collection, since reservations generally may be made a year in advance of the actual flight. Under current practices airlines may keep some data for as little as 24 hours after a flight, while other data elements may be retained for much longer but in a format that is not readily

accessible. Proposed §§ 70.4(d) and 71.10(d) would require the airline to submit the data to CDC in an electronic format within 12 hours of a request.

The RIA assumes that the costs associated with archiving data for 60 days would be incremental costs associated with purchase of 50-gigabyte tapes. Because these tapes can be reused, the cost on an annual basis is assumed to be minimal. However, this assumption fails on at least two counts. First, it is not necessarily the case that indefinite reuse of these tapes is technically feasible. Second, the requirement to access and transmit the data stored on these tapes within 12 hours of a request from CDC may necessitate more real-time data storage media (*e.g.*, server-based secondary storage). There is also a significant potential cost associated with electronic data transmission utilizing a medium that is not currently available.

Furthermore, CDC does not explain the basis for extending the 12-hour turnaround over the entire 60 days that the data must be stored. There appears to be an inverse relationship between the time elapsed since a flight and the urgency to contact passengers quickly. In fact, the only likely scenario in which data could be required for passengers on a flight that occurred more than 30 days in the past would be cases in which another passenger or crew member was diagnosed with tuberculosis subsequent to the flight and determined to have been infectious at the time. Consistent with past CDC guidance, airlines have provided notification to those individuals who may have been exposed by letter or phone call. Although this guidance encourages airlines to make such notification "in a timely manner," the option of contacting potentially-exposed individuals by mail indicates a lack of urgency that does not support the need for a 12-hour turnaround to retrieve the contact information.

Data is to be transmitted to CDC "electronically," but otherwise the mode of transmission is not specified. The global standard for transmission of data for customs purposes is UN EDIFACT, but CDC does not currently have the capability to receive data in this format. Without further consideration and discussion of CDC's capabilities, or of the possible use of another agency's system to receive and store this data until such a time as CDC

requires it, it is impossible for ATA to evaluate the technological challenges and costs associated with transmission of data.

E. Costs

CDC estimates that each major airline would incur costs of $10 million dollars for reprogramming and recurring annual costs of $676,000 to $710,000 for archiving and administrative tasks. Even if these projections were accurate, which they are not, these estimates would amount to hundreds of millions of dollars to the collective industry and should not be treated as an insignificant expense to an industry that is experiencing its fifth straight year of significant losses. These projections are based on incomplete and uninformed assumptions about the way in which these requirements would or could be implemented, and should not be given any credence in evaluating the burden of the NPRM. As noted above, the RIA available for review in the rulemaking record is labeled "Draft," and ATA asks that an additional opportunity be provided to review and comment on a final RIA prior to the finalization of the rule.

The premature and speculative nature of the NPRM, factual and intellectual errors and inconsistencies in the NPRM RIA make it impossible to fully and accurately estimate the impacts of any final rule. While it was not feasible for ATA to conduct an independent analysis of all of the costs potentially associated with the passenger information requirements of the NPRM in the 60 days initially provided for comment, it is painfully obvious that the CDC's estimate is far short of the actual costs that would fall on the airlines. In broad terms, under the least-costly scenario and with regard to the passenger contact requirement alone, ATA airlines conservatively would incur hundreds of millions of dollars in annual incremental costs simply in explaining CDC's requirements and collecting data at the point of sale for passengers who book directly through ATA airlines using call centers. Additional costs may be attributed to those whose bookings originate through travel agents or airline web sites but who ultimately would need to interact with reservation agents or airline personnel at airports to provide additional or updated information. Incremental costs of passenger data collection alone would increase many times under any data collection at point of departure. These very rough estimates do not

include all other direct and indirect costs of the passenger data collection and other elements of the proposed rule.

The RIA contains serious flaws, including the fact that it unjustifiably imposes all of the costs of the rule on the private sector and traveling public. In fact, for the benefits of the rule to be realized, significant public sector investments would need to be made without which the airline element of the rule would have minimal benefits. Even perfect contact information, which is highly unlikely to be obtainable under this proposal, would not produce the public health benefits claimed if CDC had insufficient resources for contacting those possibly exposed to a communicable disease during flight, or inadequate treatment options available. Any airline industry support for some version of passenger data collection, storage and sharing with the CDC will be entirely dependent on a showing that the CDC has or will have the capacity to effectively use this information. It would be totally unacceptable for the CDC to impose costs on the airlines without making the required investment in its own capacity to guarantee the benefits envisioned in the RIA.

Furthermore, the RIA uses as the baseline for evaluating the benefits of the NPRM the situation as it existed during the SARS outbreak of 2003. As referenced above, the development and current availability of machine-scannable forms along with the MOU between HHS and DHS makes this a misleading and inapt comparison. Most of the impediments associated with passenger contact tracing in the baseline scenario – manifests containing only the passenger name and seat number, illegible customs declarations, and incomplete or inconsistent information on customs forms – have been cured by these subsequent developments. Therefore, the RIA is flawed not only in its cost projections but in its estimate of benefits that would be produced under the NPRM. The RIA both understates costs and overstates benefits of the proposed rule.

The costs estimated for data collection under the POS scenario are assumed to be primarily associated with programming by airlines, opportunity costs of passenger time, and other costs borne by travel agencies and similar entities. This ignores the substantial

costs which would be borne by airlines in connection with their own reservations processes. One ATA member, who attributes 30% of ticket sales to in-house reservations, estimates that once training, additional manpower requirements, new equipment and programming are taken into account it could see a cost increase of approximately *$46,500,000 per year*. Another ATA member has estimated that each additional minute of "talk time" for North American reservations would cost the company $1.00. Merely for the sake of illustration, even a conservative assumption of an average of one minute in incremental time for airline reservation agent to just to inform the passenger of the reason for data collection and to collect passenger data could yield hundreds of millions of dollars in incremental costs.

CDC's assumption of 45 seconds to collect passenger data (70 Fed. Reg. 71917) is based on industry estimates in another matter that envisioned address collection only. By contrast, the CDC proposal anticipates collection of many data elements of which address is just one. Even with the allowance of an additional 15 seconds for passengers to locate emergency contact information or other information that is usually not at the passenger's fingertips, the time estimated is unrealistically short. A more reasonable assumption of the periods required to provide/collect data alone could double estimates of the time and cost of POS data collection to airlines (when they take the booking) or travel agents.

Moreover, CDC implicitly assumes in considering POS data collection that incremental passenger data collection costs are associated only with flown tickets. This assumption overlooks the fact that not every inquiry about booking a ticket results in a booking and not every booking results in a flight flown. There are costs associated with informing passengers about the data collection requirement and collecting the data for such potential passengers even in transactions that do not ultimately result in a flown ticket. In a POS collection scenario, airlines and travel agents would bear the costs of data collection for passengers who initiate but do not complete the reservations process or who book a ticket but never fly.

Data collection at the point of departure is absolutely unacceptable to the airline industry.

Under the POD scenario, costs fall even more heavily on the airlines by CDC's own estimate. Under this situation a wholly separate information collection process would be undertaken at departure, adding to check-in times and requiring airlines to hire additional personnel to facilitate information-gathering and avoid excessive queuing time for passengers.

CDC assumes that these additional airline employees would be provided portable workstations to allow the information to be gathered from passengers while they are waiting in line or at the departure gates. This assumption flies in the face of reality. As anyone who has traveled in the past few years knows all too well, the challenge of incorporating new security procedures into existing space at airports has resulted in less room for airline ticket counters and increased the time required to clear security and get to the gate before departure. In addition, adding personnel and requiring each passenger to interact with an airline employee would be counter to recent efforts to cut operating expenses and speed the check-in process by increasingly relying on self-service kiosks and on-line check in. Reprogramming these kiosks to accept additional passenger information and elevated waits at self-service kiosks argue against a POD data collection approach. Moreover, CDC fails to take into account passengers' reactions to being asked to provide extensive personal information, some of which they have already supplied, at a time when they are most likely to be stressed and time-constrained.

In calculating costs associated with POD data collection, the RIA ignores the cumulative effect of individual passenger data input delays on others in the queue. This delay cascade would eventually lead to operational delays, as passengers miss flights and have to be re-booked. The RIA also underestimates the cost of portable workstations, which is estimated to be $400 per unit. While it is unclear precisely what type of portable workstation the CDC envisions being used in this situation, based on current development work being undertaken on wireless, handheld devices suitable for use in an airport environment, the unit cost is more likely to fall in the $1,500 to $3,000 range. The cost of equipment, is estimated by one ATA member to range from *$14 million to*

$26.6 million; with an *annual* cost for additional personnel of *$24 million* for just that one company.

Many inbound international passengers' travel begins on an airline different from that which provides the international service. This could require airlines subject to the NPRM to solicit additional information of passengers whose itinerary began on another carrier and in another country, creating additional serious operational complexity and cost in complying with the proposed rule.

As an example, a passenger could originate in Berlin on Lufthansa airlines and connect to a flight in Frankfurt for travel to the United States. In a POD data collection scenario, the carrier providing Frankfurt-U.S. service would be compelled to solicit contact information at the Frankfurt gate. Such a POD requirement would increase data collection time for passengers connecting from other airlines from the current 60 seconds to 1 to 1½ minutes per passenger under CDC's estimate. (It should be noted that ERG/CDC's estimates seem to grossly understate the amount of time needed to collect the data elements CDC seeks and is premised on their belief that access to frequent flier information will greatly diminish the collection times. ERG claims that it will take only an additional 30 seconds, on average, to confirm or update information for a frequent flier.) This scenario would be further complicated under a POS scenario if the airline providing the first leg of service did not have a code share arrangement with the airline providing the international service.

Multiplying this increase in data collection time by a realistic 100 connecting passengers per international flights inbound to the United States would potentially force increased connection times at international airports, possibly disrupting international schedules and jeopardizing use of allotted departure times at congested international airports ("slots"). A mere 30 minute delay for 82 flights would cost one airline alone $11.2 million.

The increased connection time that the proposed rule would require could decrease U.S. carriers' competitiveness for transoceanic service for passengers who chose solely

foreign carrier service (where data could be efficiently collected at the first flight leg), thus avoiding delays for the U.S. bound flight. Connecting international passengers from other U.S. carriers would create similar data collection and exchange difficulties. In the long term carriers would be likely to be able to modify procedures to permit exchange of contact information from other carriers, but it will require additional time and resources to do so.

Additional unquantified costs such as congestion in check-in areas (including unintended security concerns and costs), passenger wait time and potential rescheduling of flights to permit needed processing would impose staggering costs and disruptions to the airline industry. These problems would be exacerbated at key international airports such as London Heathrow, which is highly constrained in terms of both terminal space and arrival/departure slots. As a single example, the counter space required for longer collection of passenger information at Heathrow is unlikely to be available at all, particularly if all airlines require additional space for this data collection. Airlines might conceivable have to retime flights at Heathrow were a POD data collection procedure in place, potentially losing valuable departure slots.

The POD scenario assumes that only "incremental data" would need to be collected at the airport, since would already be available from loyalty program (frequent flyer) databases. Airlines are understandably reluctant to make this information available to competitors. In addition, airlines may not have a ready means of ascertaining that the information in these databases is complete and up-to-date at the departure point. We have not assessed the privacy implications of CDC's assumption that loyalty program information would be made available for public health purposes, but loyalty program members may be less willing to participate in such programs if their personal data were used in this way. Finally, this proposal ignores the fact that a great number of passengers are not members of a given airline's loyalty program or have not provided or updated personal information to that airline's program.

In fact, neither of the scenarios for data collection analyzed as part of the RIA is sufficiently realistic to generate meaningful cost estimates, nor can ATA generate its own cost estimates without further consideration of how this requirement might be coordinated with other government initiatives. It is easy to see, however, that the cost of compliance with this proposed rule could be $1 billion or more. CDC should be required to justify *all* of the costs associated with this proposal. Given that the underlying public health responsibility rests with the Government and not the airlines, CDC should be prepared to reimburse airlines for costs that are attributable to the broad goal protecting the general public from the spread of disease.

F. Compliance

Proposed §§ 70.5 and 71.11 require that within six months of the final rule, each airline would develop a written plan for carrying out these requirements and implement the plan within two years of the issuance of the final rule. To accomplish the programming necessary for collecting the proposed data, build the required transmission vehicle, and train staff, more than 18 months may be required. Airlines would have to test and evaluate the effectiveness of the plan within 60 days of implementation, then annually thereafter and revise as necessary. Although it is anticipated that most airlines would develop a written plan for internal purposes as part of implementing these requirements, CDC appears to view the plan as a means of tweaking requirements indefinitely.

As outlined in proposed §§ 70.5(d) and 71.11(d), airlines would be required not only to review the plan on an annual basis, but to conduct drills or exercises to evaluate the effectiveness of the plan if the airline has not transmitted data under these requirements in the prior year. In addition, while airlines are not required to verify the accuracy of the information or prohibit passengers from flying if they refuse to provide it, the NPRM states that CDC would seek revisions to an airline's plan if sufficient data is not obtained or proves to be unreliable.

Inexplicably, CDC entertains imposing hundreds of millions of dollars of costs on the industry without even pilot testing voluntary data collection. Experience both with

DOT's emergency contact cards and the broad literature regarding survey response strongly suggest that airlines would experience well short of the 90% + rate of voluntary compliance projected by CDC. Thus, revisions to an airline's plan to improve the collection of data likely would involve requiring changes related not to the effectiveness of the plan itself, but to gaps, erroneous assumptions and missteps in the regulatory requirements. For example, if CDC's assumption that passengers would more willingly provide information for public health purposes proved to be incorrect, airlines might be asked to come up with other incentives to get passengers to volunteer data. Similarly, if passengers were found to routinely supply false or out-of-date information, airlines might be required to amend their plans to provide a means of verifying or updating information. The cost of this review and revision is nowhere addressed in the NPRM or RIA. The prospect of creating and paying for two systems (assuming failure of the initial voluntary system) and then facing stiff monetary penalties, as discussed below, for failure to meet some unspecified standard of "effectiveness," makes this of even greater concern to the airlines.

Finally, and as discussed below with reference to the written plan for reporting illness and death on board aircraft, the requirement in proposed §§ 70.5(b)(3) and 71.11(b)(3) to identify an airline agent (including full name) who will serve as the point of contact between the Director and the airline concerning requests for passenger and crew information is impractical, since in many cases, the appropriate point of contact is a position rather than an individual (*e.g.*, the duty officer or emergency operations center). ATA recommends that airlines be given the option to identify a point of contact by individual name or position, accompanied by contact information that is valid 24-hour basis, 7 days of the week for purposes of emergency situations.

III. CDC'S AUTHORITY WITH RESPECT TO INTERSTATE AND INTRASTATE TRAVEL

To the extent there is any basis to regulate airlines with respect to public health, that authority rests with the federal government, not with state or local governments. The responsibility of the federal government to prevent the introduction and spread of

communicable disease from other countries dates back to the earliest days of the United States. (70 Fed. Reg. 71893-71896). The federal government also has authority under the Constitution to prevent the introduction and spread of communicable disease from one state to another. This authority also is derived from the Commerce Clause, while the states' authority over communicable disease is based on the police power reserved to them by the 10th Amendment. As the NPRM's preamble explains, the federal government's authority extends to: (1) The use of the channels of interstate commerce; (2) the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat to interstate commerce may come only from intrastate activities; and (3) activities that substantially affect interstate commerce.

This authority over interstate activities was until recently implemented through regulations administered by the Food and Drug Administration (FDA). In August 2000, these regulations were transferred to CDC and are now contained at 42 C.F.R. part 70. Many of the inconsistencies between these parts are the result of this history, and the proposed rule does much to reconcile and harmonize them.

Commercial airlines are inherently instrumentalities of interstate commerce. Moreover, as entities that typically operate in multiple states and often in multiple countries, airlines seek consistency and harmonization of requirements whenever possible. Although most airlines distinguish between international and domestic operations, there are few situations in which there is a relevant distinction between interstate and intrastate service. As a practical matter, on any given intrastate flight passengers may have connected from an interstate or international segment, while the flight crews are often based in another state entirely and maintenance of the aircraft carried out in yet another state. In some aspects of the NPRM, CDC explicitly includes intrastate travel under its authority: For example, under proposed § 70.14(a), provisional quarantine could be imposed on anyone in the qualifying stage of a quarantinable disease who the Director reasonably believes is *either* moving or about to move from one State to another State *or* is a probable source of infection to others who will be in interstate travel. Similarly, under proposed § 70.6(d), the Director may apply the requirements for travel permits to persons and aircraft

traveling entirely within a state or possession when it is determined that there is inadequate local control.

As a legal matter, states have no authority to regulate air transport. Whether viewed as the use of the channels of interstate commerce, an instrumentality of interstate commerce, or an activity that substantially affect interstate commerce, commercial airline routes within a single state are part of a national, and in some cases an international route structure. We question the authority of CDC to issue the proposed regulations with respect to some aspects of the NPRM because they appear to be an unnecessary and unreasonable burden on airlines. The lack of federal authority with respect to those aspects of the NPRM should by no means be interpreted as an invitation for state or local governments to impose regulations instead.

IV. REPORTING REQUIREMENTS FOR DEATH OR ILLNESS ON BOARD AIRCRAFT

Under existing regulations, the "person in charge of any conveyance" in interstate traffic must notify the local public health authority of "a case or suspected case of a communicable disease" at the next stop as soon as practicable (current § 70.4); while in international transport the "commander of an aircraft destined for a U.S. airport" must report any death or ill person immediately to the quarantine station at or nearest to the destination airport (current § 71.21). The inconsistencies between these provisions has caused confusion and hindered rapid compliance despite efforts on the part of CDC staff to reconcile the requirements.

The proposed revisions as set forth in §§ 70.2(a) and 71.6(a) would make the requirements identical for interstate and international flights by requiring the report to be made to the Director of the CDC as soon as the death or illness is made known to the aircraft commander, and where possible, at least one hour prior to arrival. Although ATA supports the concept of a single set of requirements regardless of whether the flight is operating in interstate or international traffic, we are concerned that the proposed revisions could increase the reporting burden on airlines and miss an opportunity to

further streamline implementation. Specifically, while operators of international flights have been required to report "any death," the provision applicable to domestic flights only covered cases (or suspected cases) of communicable disease.

Based on anecdotal reports from ATA's members, naturally-occurring deaths during flight, while not common, are most often associated with pre-existing terminal illness or cardiac arrest unrelated to communicable disease. Such occurrences are handled as medical emergencies, with arrangements made by the airline for emergency medical services ("EMS") to meet the flight on arrival. Therefore, we recommend that the language of proposed §§ 70.2(a) and 71.6(a) be amended to read "any deaths *related to a suspected communicable disease."* This requirement would be more closely tailored to the CDC's goal of identifying and tracing the spread of disease. Since *any* death on board an aircraft would be handled by medical professionals once the plane has landed, deaths from other causes still would be reported by these responders to the appropriate local authorities.

The regulation should clarify that reports of illness are to be based on readily observable symptoms and/or information provided voluntarily by the ill person or his or her traveling companions. Aircraft crew members are trained to deal with emergency medical situations but are not medical professionals, and must be sensitive to a passenger's privacy and dignity. The definition of "ill person" (proposed §§ 70.1, 71.1), although intended to rely on "descriptive terms that are overt and commonly understood by lay persons," (70 Fed. Reg. 71896), is overly-specific in that it relies on seemingly precise medical measurements (*e.g.* temperature 100.4º F or 38º C or greater), technical terms not readily understood by non-medical personnel (*e.g.*, changes in level of cognitive function, bloody sputum, respiratory distress) and information that is not readily observable and may be difficult to obtain from an ill passenger, particularly when there may be language or cultural barriers (*e.g.*, occurrence in a 24-hour period of three or more loose stools).

At the same time, the definition is over-broad because it potentially describes many illnesses or sets of symptoms that are *not* related to a serious communicable disease. As

noted in the preamble, this definition is important because it determines the scope of the reporting requirement. If this were the only implication, over-inclusion (*i.e.*, reporting illness that is *not* associated with a communicable disease) might be a prudent course. However, as described in other provisions of the NPRM, reporting an ill person in accordance with this definition, which the NPRM acknowledges is broad by design, could trigger a response that might include extreme measures such as quarantine of the entire planeload of people.

ATA recommends that this problem be addressed on two levels. First, the definition of "ill person" should be revised to mean "a person who exhibits symptoms associated with communicable disease" and should be expanded to include more commonly understood and easily recognized indicators. For example, fever could be identified as a symptom of many communicable diseases, indicated by a flushed or unusually pale complexion, excessive perspiration or shivering, or a temperature of 100.4º F or 38º C or greater. Similarly, the signs of diarrhea could include odors and frequent or prolonged use of aircraft lavatories in addition to the more clinical description provided. Crew members are trained and responsible for safety of the flight and the passengers on board, and should not be placed in situations where they would be required to make technical medical decisions. Nor should airlines be penalized for failure to diagnose a communicable disease when a passenger presents only nonspecific symptoms that do not otherwise require medical attention.

Second, in order to prevent this even broader definition from triggering an unnecessary response, the regulation should provide that the initial report of an "ill person" is to be followed by screening of the case with the assistance of the airline medical advisor(s) and CDC personnel to determine if the symptoms are in fact indicative of a communicable disease of interest to CDC (although the definition of "communicable disease" does not include any reference to severity or public health consequences, presumably, CDC is not concerned with common colds and the like). It is already common practice for aircraft crew members to relay symptoms to medical professionals on the ground in order to obtain advice regarding on-board management and to assist in the decision of whether to

divert the aircraft to a closer destination. Including CDC experts in this communication (either directly or by having the medical advisor make the report to CDC) would enable CDC to identify situations that warrant a public health response more quickly and accurately, while those that do not warrant such a response could be handled as appropriate by the airline under existing protocols for medical emergencies.

Providing a single point of contact for reports of disease is an improvement over the existing regulations, under which the CDC quarantine station was to be notified in the case of international flights but local public health authorities were to be notified of illness on domestic flights. Where local authorities deploy fire and rescue personnel to respond to a report of communicable disease, the result may be an "over-response" based on their training, which typically does not include this type of incident. While there may be reasons for CDC to coordinate with local and state public health authorities, the prospect of having to contact one of potentially thousands of local health departments in an emergency situation unnecessarily complicated the airlines' reporting function. ATA recommends that the requirement to make the report to the Director of the CDC be clarified to expressly allow the report to be made either to the CDC Emergency Operations Center or to one of the CDC Quarantine Stations. In either case, ATA believes that CDC is in the best position to relay the report to the appropriate Quarantine Station and/or local public health authorities.

The NPRM contains a new requirement for airlines to prepare and submit to CDC a written plan for reporting deaths and illnesses on board flights (proposed §§ 70.3, 71.7). As noted in the NPRM, airlines already have procedures in place for managing illness during flight; however, these procedures may not be contained in a single document or "plan," but may instead need to be assembled from various internal guidelines and protocols (*e.g.*, there may be separate procedures for flight attendants and pilots). While the requirement for a written plan is not in itself unduly burdensome, it is important that CDC recognize the variations among airline corporate structure, labor agreements, operational patterns and experience and the different ways in which these might be reflected in the reporting plans.

Identification of an airline agent (including full name) who will serve as the point of contact between the Director and the airline regarding reports of death or ill passengers (proposed §§ 70.3(b), 71.7(b)) is overly rigid. In many cases, the appropriate point of contact is a position rather than an individual (*e.g.*, the duty officer or emergency operations center). Even where there is a single person assigned to such a position, these individuals may change positions, take medical or personal leave or otherwise be unavailable on occasion. In such cases a full name may be irrelevant. Airlines should be given the discretion to identify a point of contact by individual name or position, accompanied by contact information that is valid 24-hour basis, 7 days of the week for purposes of emergency situations. If CDC also seeks to identify an airline agent for other purposes (*e.g.*, the person responsible for submitting or updating the written plan) this should be clarified in the rule. Here again, this may be a title or position, rather than an individual's name.

The proposed requirement to review the plans on an annual basis is sufficient to ensure the currency and effectiveness of the plan; mandating that airlines that have not reported illness or death in the previous year undertake drills or exercises is unnecessary micromanaging (proposed §§ 70.3(f), 71.7(f)). Aircraft crew members are already subject to ongoing training requirements under Federal Aviation Administration (FAA) regulations. Airlines should have discretion to evaluate the plan and determine whether any drills or exercises would be helpful in its implementation. The mandatory requirement to conduct drills or exercises should be eliminated from the final rule.

V. DISSEMINATION OF PUBLIC HEALTH INFORMATION

Although it is included under the provision entitled "Report of Death or Illness on board flights," proposed §§ 70.2(b) and 71.6(b), which would require airlines to distribute information "at the time and in a manner specified" by an order of the Director of the CDC, imposes a new and open-ended obligation unrelated to the reporting function. Without knowing the manner that might be specified at some uncertain date in the future

it is difficult to assess the impact of this requirement on the airlines; however, it is obvious that an order requiring distribution of materials during flight (which would require a sufficient supply of materials to be carried on board) would present very different logistical challenges and impose different costs than one which allowed distribution after landing (which would allow materials to be stocked at airport stations).

While ATA member airlines have in the past cooperated with CDC in distributing or preparing to distribute health information in certain situations, this was done on a voluntary basis and with the understanding that each airline would have the flexibility needed to carry this out in the most efficient manner possible. In fact, CDC previously proposed that "airlines be afforded complete flexibility in determining how these materials are distributed, as long as they can ensure that each passenger receives them prior to disembarkation in the U.S."[14] Authorizing the Director to order distribution of materials in a manner specified, with no recognition of the need for flexibility or the potential impact on airline operations, is inconsistent with this statement and with the spirit of cooperation that has thus far characterized discussions between the CDC and ATA members on this issue.

The preamble to the NPRM explains that "CDC expects to exercise this requirement in situations where a significant outbreak of a quarantinable disease is detected abroad and there is the potential for exposure among interstate travelers," yet the language of the proposed regulations gives the CDC Director untrammeled authority to invoke this requirement to distribute public health information any time that it is deemed necessary to prevent the spread of communicable disease, whether or not related to air travel.

ATA recommends that the proposed regulation be recast as a separate provision, entitled "Dissemination of Public Health Information," to read as follows:

The Director may request that airlines voluntarily assist in the dissemination of public health notices, recommended public health measures, and other public health

[14] Letter from James E. Barrow, Acting Director of the Division of Global Migration and Quarantine, to Katherine Andrus, Assistant General Counsel, ATA (June 29, 2004).

information related to the introduction, transmission or spread of communicable diseases by air travelers. Where voluntary measures are determined to be insufficient to prevent the introduction, transmission or spread of communicable diseases by air travelers, CDC will distribute such materials at arrival points in a manner designed to minimize disruption and delay of passenger disembarkation and facilitation.

VI. TRAVEL PERMITS, BILLS OF HEALTH, AND HEALTH DECLARATIONS

The NPRM includes several provisions that generally relate to clearance for travel. While some of these are carried forward essentially unchanged from existing regulations, they have been so seldom invoked since the advent of commercial flight that it is essential that they be subject to careful consideration and review.

A. Travel Permits

The first of these, and the only one to apply to domestic travel, would require a person who *knows* he or she is in the communicable or pre-communicable phase of a quarantinable disease to get a travel permit from CDC prior to travel, and further prohibits airlines from knowingly carrying such a person in the absence of such a permit (proposed § 70.6). This is similar to the existing requirements of current § 70.5, although that requirement has not been enforced recently to ATA's knowledge. Under the proposed rule airlines must comply with any permit conditions, and take any other measures necessary to prevent the spread of the disease. Again, this is similar to the current § 70.5. However, neither the current nor the proposed regulation is harmonized with another existing regulation, issued by DOT and set forth at 49 C.F.R. § 382.51(c) as part of its regulations governing nondiscrimination in air travel on the basis of disability. This provision requires airlines to transport persons with communicable diseases *unless* the individual's condition poses a direct threat to the health or safety of others, and the airline makes an individualized assessment that the potential harm will actually occur and that reasonable modifications of policies, practices or procedures will mitigate the risk.

The lack of public familiarity with the concept of travel permits, coupled with DOT's nondiscrimination regulations, make it difficult for airlines to implement this provision as proposed. In practical terms, unless passengers self-identify as having been diagnosed

with a quarantinable disease, airlines have no means of differentiating between those who are prohibited from traveling under this provision and those who must be allowed to travel under DOT's regulations. ATA recommends that CDC accompany this provision with a comprehensive education campaign targeted to health care professionals who are in a position to diagnose such diseases, and who could in turn inform their patients about potential restrictions on travel and their responsibility under the law.

ATA also recommends that the provision be revised to clarify that it is the responsibility of the medical professional(s) treating an individual, and not the airline, to determine whether and when such individual is in the qualifying stage of a quarantinable disease. Any travel permit issued to such an individual should specify the extent of the qualifying stage. This is particularly relevant for diseases like tuberculosis. Furthermore, airlines should not be required to transport such individuals if compliance with the conditions of the travel permit is infeasible. The provision should also clarify that airlines have no liability as a result of the travel permit requirement.

B. Bills of Health

Proposed § 71.4 would authorize the Director of CDC to require aircraft departing a foreign airport for the U.S. to obtain or deliver a bill of health prior to take-off, a reversal of the existing regulation (current § 71.11) which expressly states that this is not required. Although the term "bill of health" is not defined in the NPRM, we understand it to mean a clearance issued by U.S. officials indicating that no communicable disease is present on board the aircraft prior to its departure for the United States. The NPRM notes that CDC does not intend to require bills of health for routine traffic, but cites concerns about bioterrorism and emerging disease as potential triggers for using this tool. It is unclear under what authority CDC would act, particularly where the aircraft is operated by a non-U.S. airline, and what types of inspections or other procedures would be needed to obtain the requisite bill of health. The term "bill of health" should be defined and the procedures and criteria for obtaining such a document described and published before the issuance of a Final Rule so that interested parties have adequate time to comment.

Furthermore, we note that the potential requirement for a bill of health appears inconsistent with Article 35 of the International Health Regulations, which states that no health documents other than those provided under the newly revised International Health Regulations ("IHR") shall be required in international traffic. As discussed below, the IHRs were subject to considerable international deliberation and were adopted by the World Health Organization just last year. CDC should be cautious in deviating from the agreed-upon provisions in the absence of a compelling reason.

C. Health Declarations

The NPRM describes proposed § 71.28 as carrying over the provisions of current § 71.46, which addresses rodent infestation inspections and deratting certificates. While proposed § 71.28(a) does carry over the existing provisions, § 71.28(b) further clarifies that the Health Part of the Aircraft General Declaration, as described in Article 38 of the IHR, is not currently required as a condition of arrival in the U.S. However, the language of the provision, which states that this is the case "[u]nless otherwise determined by the Director, appears to reserve to the CDC authority of the CDC to require a Health Declaration at some point in the future. It is not clear whether CDC intends there to be a meaningful distinction between a bill of health, as the term is used in these regulations, and a health declaration under the IHR.

As noted above, the IHRs were adopted by the WHO in 2005 after prolonged consideration, and have widespread international support. Airlines operating on international routes already are subject to multiple and sometimes conflicting requirements imposed by individual nations, and therefore ATA supports the use of international standards whenever possible and appropriate. CDC should consider harmonizing potential requirements under this rule with the international standards set forth in the IHR.

VII. INSPECTIONS AND SANITARY MEASURES

A. Inspections

Proposed §§ 70.11(a)(1) and 71.13(a)(1) provide for CDC to inspect the aircraft and things on board whenever the Director reasonably believes that the aircraft or things on board the aircraft are or may be infected with a communicable disease. These provisions consolidate and make applicable to interstate transport various requirements for international arrivals in current § 71.32 (disinfection, disinfestation, fumigation and related measures), current § 71.42 (disinfection of imports), and current §71.44 (disinsection of aircraft). There is no guidance or discussion as to how these inspections might be carried out, or who might conduct them.

There is potential overlapping jurisdiction with the Food and Drug Administration ("FDA"), which has a well-established program for inspecting aircraft with respect to sanitary conditions, the Department of Agriculture ("USDA"), which under the Plant Protection and Quarantine ("PPQ") program is responsible for inspecting international arrivals, and with the Environmental Protection Agency ("EPA")'s regulations, guidance and administrative orders with respect to aircraft drinking water. ATA encourages CDC to develop an agreement with those agencies to ensure efficient implementation of any inspections. Guidance should be provided to all inspection agencies specifically outlining protocols that address:

- The agency responsible for making the determination whether inspection, detention, decontamination, quarantine, or release should occur;
- the agency with authority to determine disposition of the cargo, *e.g.*, detain on board aircraft or remove to remote cargo quarantine area; and
- agency guidelines relating to maximum timeframes for detention of commercial cargo that was not directly contaminated by infectious passengers.

Various additional existing provisions relating to the inspection of conveyances arriving at a U.S. port are consolidated in proposed § 71.12. The proposed language provides that carriers arriving at a U.S. port are subject to detention and inspection to determine the existence of rodent, insect or vermin infestation, contaminated food or water or other unsanitary conditions that may require sanitary measures to prevent the introduction or

spread of communicable disease, similar to current § 71.41. Proposed § 71.12 also provides for inspection when there is a threat of communicable disease (*e.g.*, when an illness or death has been reported on board). This is similar to current §71.31(a), although that provision is expressed in the negative (inspection will not be required unless the CDC determines that failure to inspect will present a threat of communicable disease). Carriers in international transit between U.S. ports also are subject to inspection when there is a death or illness on board (similar to current § 71.48). It is unclear to what extent the proposed provision is intended to differ meaningfully from proposed § 71.13(a)(1). ATA recommends that CDC consider whether these regulations might be further streamlined and made consistent as between international and domestic operations. ATA also recommends that any revisions made should be subject to public comments before a Final Rule is issued.

B. Sanitary Measures

Under proposed §§ 70.11(a)(2) and 71.13(a)(2), the Director may, in consultation with such other federal agencies as appropriate, order measures deemed necessary to prevent introduction, transmission or spread of communicable disease. The NPRM explains that CDC would determine which sanitary measures should be employed in a given circumstance based on scientific and public health principles applicable to the threat to human health. ATA recommends that CDC develop a process for pre-approval of measures, including methods and materials, which would be acceptable and appropriate in specific situations. This process should include review by the FAA and airframe manufacturers to ensure that any measures ordered are compatible with aircraft safety.

An established list of approved measures would allow airlines to familiarize themselves with the requirements and raise any concerns with the CDC well in advance of an order to implement them. In addition, the NPRM notes that a written order would not be the exclusive method for ordering sanitary measures – a CDC quarantine officer could issue verbal (oral) orders. A pre-approved list of measures, which could be referenced in such situations, would help to ensure that non-written orders are not subject to confusion or debate.

Proposed §§ 70.11(b) and 71.13(b) state that CDC will not bear the expense of any sanitary measures so ordered. Without any constraints on its authority, CDC could order implementation of measures that go far beyond what is necessary and reasonably related to ensuring that the aircraft does not present a health risk. The final rule should include language limiting the measures ordered to the least costly method of removing any demonstrable threat to the health of future passengers and crew, or allowing airlines to substitute a less-costly method that has been demonstrated to be equally effective. The cost of any sanitary measures that are intended to benefit the public health more broadly should be borne entirely by CDC or another agency of the state or federal government.

C. Detention

Proposed §§ 70.12 and 71.14 provide for the detention of an aircraft and all things on board until the completion of sanitary measures, similar to current §§ 71.31(b) and 71.32(b). Since taking an aircraft out of service, even for a short period, imposes real costs the airline has an incentive to complete such measures as expeditiously as possible. However, the proposed regulations do not include a provision for re-inspection and release, leaving open the possibility that additional detention will result from ambiguity and delay in obtaining confirmation that the sanitary measures have been completed

ATA recommends that the final rule include explicit procedures for releasing an aircraft from detention, and that these procedures provide for release without the need for further inspection wherever possible (e.g., where an airline is carrying out pre-approved measures in accordance with its established protocols). Any additional detention of the aircraft or delay imposed on its return to service following completion of sanitary measures would impose a cost on the airlines that should be fully reimbursed by CDC.

VIII. SCREENINGS OF ILL PERSONS

Proposed §§ 70.13 and 71.16 authorize CDC to conduct screenings at airports and other locations to detect the presence of ill persons using visual inspection, electronic temperature monitors, or other means determined appropriate. This appropriately places

the responsibility for screening on the CDC, rather than on the airport or airline. CDC should bear the expense of purchasing and operating equipment such as electronic temperature monitors. In addition, CDC should coordinate closely with DHS to avoid further inconvenience or delay of passengers. Space requirements for the screening of passengers for signs of illness should not come out of airline leaseholds and airlines should not be asked nor bear any responsibility for paying rent to airports for space utilized by CDC. Additionally, CDC must put in place measures to assure that the line waits already common for TSA security screening do not increase by these medical screening procedures.

IX. QUARANTINE

"Quarantine" is defined at proposed §§70.1 and 71.1 to include holding people on a voluntary or involuntary basis to prevent the spread of infection and illness, and includes isolation. In other contexts, CDC distinguishes between isolation, which applies to ill people, and quarantine, which applies to people who may have been exposed but are not yet ill. Although the concept of quarantine has been well-known for centuries, and the authority of the federal government to impose quarantine is well-established, it has not been invoked in modern times. Simply by proposing detailed regulations for implementing quarantine, CDC has raised the specter of this extreme public health measure coming into use. The mere prospect of quarantine may induce ill individuals to mask symptoms or discourage healthy individuals from travel and social interaction, and therefore the authority to quarantine must be carefully construed to avoid misuse and unintended consequences.

A. Provisional Quarantine of Airline Passengers and Crew

Proposed §§70.14 and 71.17 provide for CDC to impose "provisional quarantine" of a person or group reasonably believed to be in the qualifying stage (*i.e.*, communicable or precommunicable) of a quarantinable disease. Provisional quarantine is defined at proposed §§70.1 and 71.1 to mean, in effect, quarantine until such a time as a longer-term order has been issued or it has been determined that quarantine is unnecessary. Because

provisional quarantine is likely to be invoked in cases where there is imperfect information as to the existence of a quarantinable disease, it is more likely to be erroneously imposed than long-term quarantine. The potential for "false alarms" and the implications of these for public acceptance of such measures as well as public confidence in CDC cannot be ignored.

As described in the NPRM, Quarantine officers routinely conduct short term examinations of ill passengers at airports to assess the presence of disease on a voluntary basis, but provisional quarantine might be invoked in situations where the ill passenger withholds his or her consent. (70 Fed. Reg. 71902). However, the recent tabletop exercises conducted at various airports made clear that CDC is contemplating using its quarantine authority to detain entire planeloads of people at an arrival airport for the period of a provisional quarantine, and we have reviewed the proposed provisions in light of that possible scenario.

While provisional quarantine may be necessitated in situations involving serious public health risks, its use should be rare and extremely well-justified. Alternative methods of accomplishing the same goal should be considered (*e.g.*, medical examination and monitoring, vaccination or prophylaxis and/or "social distancing" at each individual's home) and quarantine should not be used in situations where it has not been demonstrated through experience or modeling to be an effective tool in preventing the spread of a particular disease. The chilling effect on travel of even a single quarantine incident at a U.S. airport should be taken into account in each and every case in which it is potentially applicable, and the economic and social impact weighed against the potential benefit.

Moreover, the character of the response to a situation involving a possible quarantinable disease can have an impact on public perception. One well-publicized incident during the SARS outbreak in 2003 featured a local response to a report of arriving passengers displaying SARS-like symptoms, which included fire trucks surrounding the aircraft and personnel clad in "moon suits" boarding the plane. Footage of this incident was played repeatedly on television news for several days, despite the fact that the passengers were

quickly identified as being disease-free. In that case, part of the problem may have been related to the fact that the airport did not have a CDC quarantine station, and the lack of familiarity of the local public health authorities with airline procedures. CDC must understand the significant ramifications of its action *before* decisions are made, and public perception and costs must be included in this evaluation.

Under the NPRM, provisional quarantine may be applied to an individual who is "precommunicable." This is a change from the existing language, which bases quarantine on a reasonable belief that a person "has been exposed to" a quarantinable disease, but it is unclear what CDC intends by this change. "Precommunicable," which is not in itself defined, suggests that a person has been infected but is not yet at the stage of the disease where he or she can transmit the disease to others. As a practical matter, it may be difficult to determine at an early stage which of those individuals exposed to contagion have been infected. Could this definition be applied to a group of airline passengers that has visited a region experiencing an outbreak, even if no one in the group is symptomatic? The rule should include further criteria for identifying an individual or group as "precommunicable," and limits on triggering provisional quarantine based solely on asymptomatic individuals. Otherwise, the authority to quarantine could be used to detain people on a speculative basis, merely to see if they develop symptoms of a disease.

As proposed, provisional quarantine may last up to three business days, ostensibly to allow time for collection and analysis of samples needed to confirm an initial diagnosis of a quarantinable disease. The NPRM notes that in most circumstances, provisional quarantine would last only as long as necessary to ascertain whether the person or persons are possible carriers of the quarantinable disease, suggesting that in some cases laboratory confirmation may not be necessary. Given the advent of more rapid analytical methods (*e.g.*, the test recently approved by HHS that provides preliminary results on suspected avian influenza samples within four hours) and the availability of 24/7 laboratory facilities in an emergency situation, three business days – which could extend to six actual days if provisional quarantine went into effect at the start of a holiday

weekend – is excessive. The final rule should limit provisional quarantine to no longer than is absolutely necessary to ascertain (or rule out) the presence of a quarantinable disease.

B. Use of Airport Facilities for Quarantine

As noted above, recent tabletop exercises indicate that CDC intends to utilize its provisional quarantine authority with respect to airline passengers and crew arriving on board a flight that also carries a person with symptoms of a quarantinable disease. According to these planning scenarios, passengers and crew members who are not symptomatic and do not require medical treatment would be detained at the airport until a further quarantine order is issued or they are cleared of any quarantinable disease.

Proposed § 71.29(a) carries over a requirement from current § 71.47 for airports that receive international traffic to provide, without cost to the government, exclusive space for carrying out federal responsibilities under these regulations.[15] However, whereas the existing regulation cites as examples office and *isolation* space, the proposed rule refers to office, examination and *quarantine* space. Here the distinction between "isolation" and "quarantine" is significant; whereas only a small number of ill people from a given flight might need to be isolated and likely would be transferred to a community medical facility within a short period of time, hundreds of people might be quarantined at the airport for more extended periods.

As evidence of a change in the scope of this requirement, proposed § 71.29(b) would require each international airport to identify space suitable for the quarantine of an arriving person *or group*, under guidelines or instructions issued by the Director. While existing quarantine stations at international airports occupy relatively modest spaces – generally an office and small examining room – and are typically part of the Federal Inspection Service ("FIS") facilities, the new requirement could necessitate identifying (and presumably make available as needed) space to house hundreds of people for several

[15] 8 C.F.R. § 234.4 requires airports to fulfill requirements established by various federal agencies in order to be designated as "international airports."

days. Airports that have participated in the CDC tabletop exercises in the past year have struggled with finding appropriate space on-airport, as well as determining how best to equip and manage such a facility.

The NPRM notes that the specifications for space requirements to carry out quarantine activities are incorporated into the FIS manual; however, this guidance does not appear to cover space to implement provisional quarantine of large groups. Discussions at various tabletop exercises suggest that in addition to a substantial enclosed space, these requirements may include power, water, climate control, sleeping and eating arrangements, security and entertainment for several days. Providing this type of facility on even a prospective basis would require airports to incur significant costs. Many of these costs would be incurred irrespective of whether the facility was ever used for quarantine purposes – simply by excluding other uses that would preclude speedy conversion into a quarantine facility the airport would forego potential revenue. While this requirement applies directly to airports, in fact it is the airport tenants – predominantly airlines – who provide the revenue that airports would use to fund this massive undertaking.[16] ATA believes that any cost created by this proposal should be the responsibility of the Federal Government, not the private sector.

Constructing or reserving use of a facility at each international airport that could accommodate several hundred people in quarantine would shift the burden of preparing and paying for potential quarantine to one sector: aviation. In fact, it is just as likely that, should the need for quarantine arise in the United States, it would involve individuals who do not happen to be at an airport. As part of overall planning for potential pandemics, bioterrorist attacks or other incidents where quarantine might be invoked CDC should work with states and localities to identify facilities in each community – including airport communities – that might serve this purpose. If, in the course of such planning, an appropriate facility is identified on airport property, costs

[16] None of the commercial service airports in the United States receive state or local funding. Airports derive their revenue primarily from tenant rents and landing fees charged to aircraft operators. Airports may also receive money from the Airport and Airways Trust Fund, which though administered by the FAA is funded entirely with ticket taxes and other charges assessed on users of the aviation system.

associated with preparing this facility should be borne by the general public through tax-supported grants or other mechanisms, not by the airline industry.

X. SUSPENSION OF ENTRIES AND IMPORTS

Proposed § 71.5 implements the provisions of 42 U.S.C. 265 and authorizes the CDC, to the extent permitted by law and in consultation with other federal agencies, to prohibit the introduction of persons and property from foreign countries when there is serious danger of the introduction of communicable disease through such introduction. This prohibition would be implemented through an order of the Director, designating the persons and property subject to such a prohibition and the period of time it would remain in effect. While the underlying statutory authority for this has been in place at least since 1944, it has not been invoked often in recent history. The criteria under which this authority would be invoked should be outlined in the final rule, and the economic, social and political implications should be fully considered. Specific provisions for release of cargo loaded in cargo holds of aircraft where the cargo is not accessible from the aircraft cabin, should be outlined. It should not be necessary or appropriate in all instances for all commercial cargo shipments to be detained even if a passenger quarantine is potentially warranted.

XI. MILITARY EXEMPTION

Current § 70.8 exempts members of the military from requirements for travel permits, reporting disease and other requirements under current §§ 70.3-5 and 70.7. Proposed § 70.8 carries over those exemptions, but in addition allows the CDC to exempt aircraft belonging to the military from the requirements of proposed §70.6(a) (travel permits), and §§ 70.11-12 (sanitary measures) provided that such carriers take "adequate" sanitary measures to prevent the introduction and spread of disease. The language of proposed § 70.8 differs from both current and proposed § 71.15 in that it applies only to aircraft belonging to the military, rather than belonging to *or operated by* the military. This raised questions about civilian aircraft used for military transport under a charter arrangement or through the Civil Reserve Air Fleet ("CRAF") program. While most such

aircraft would be operating internationally (and thus covered by proposed § 71.15), it is not clear why the distinction is made.

The NPRM notes that although not explicitly exempt, military aircraft would not be subject to requirements for reporting death or illness on board or providing passenger information because these apply only to aircraft operated "commercially" (the regulations use the term "operating flights in interstate traffic.") This suggests that there may be situations in which civilian aircraft are not subject to these requirements if they are not operating "commercially." Clarification on this point is needed. The regulations should not apply to any aircraft that is being operated under contract to, or otherwise on behalf of the U.S. Department of Defense ("DOD") or other U.S. government agencies, since it can be assumed that specific requirements to protect the health and safety of passengers and crew would be in place. Cargo carried under contract to DOD (including human remains) and diplomatic pouches carried by commercial airlines similarly should be exempt from the requirements of this part, since special rules apply to their handling.

XII. PENALTIES

Proposed §§ 70.29, 71.31 would drastically increase or impose new penalties by subjecting persons in violation of the regulations to a fine of no more than $250,000 and/or one year in jail and organizations to a fine of no more than $500,000 per event. Currently, there is no penalty specified for violations under part 70, while existing penalties under § 71.2 are no more than $1,000 and/or imprisonment for not more than one year. The NPRM cites 42 U.S.C. § 271 as imposing criminal penalties for violation of federal quarantine rules, which sets the same amount (*i.e.*, not more than $1,000) as the existing regulation. The NPRM asserts that under federal sentencing classifications set forth at 18 U.S.C. §§ 3559 and 3571, violations of quarantine regulations would be classified as Class A misdemeanors subject to these proposed penalties. Without further legal analysis, we are unable to address that argument in these comments. However, ATA notes that many of the potential requirements in proposed parts 70 and 71 are unspecified in the regulations themselves and subject to the discretion of the Director of the CDC. It may be difficult or impossible for an airline to ascertain what is required in

terms of compliance in advance of an incident which produces a violation subject to these significant penalties. Lack of notice, vagueness, and failure to subject specific requirements to notice and comment would make enforcement of these requirements and imposition of penalties for their violation problematic from a Constitutional standpoint.

XIII. CONCLUSION

For the foregoing reasons, ATA strongly recommends that CDC defer taking any final action with respect to the proposed passenger information requirements until further consideration has been given to a more efficient, feasible and coordinated approach. Before CDC issues a regulation to require passenger information collection and reporting, it should work with the relevant departments and agencies of the federal government to develop uniform, consistent and workable approaches across the federal government and ensure that any resulting requirements imposed on the airline industry represent the minimum collection burdens necessary to achieve legitimate governmental objectives. The federal government needs to coordinate collection of airline passenger information and to develop one system that will work to achieve the various governmental objectives involved. The proliferation of different regulations and proposals for airline information collection, methods and requirements must be harmonized with the airline's need for uniform and workable standards.

If any new regulation of private industry is warranted, which we question, it should not be imposed only on the transportation sector and air transportation in particular, but should be implemented in a uniform manner across industry to allocate responsibilities for compliance in a reasonable and equitable manner. The airline industry should not be required to carry an unfair and disproportionate burden for these public health concerns.

Respectfully submitted,

Katherine B. Andrus
Assistant General Counsel
Air Transport Association, Inc.

JOINT COMMENTS OF
AIRLINES FOR AMERICA,
THE INTERNATIONAL AIR TRANSPORT ASSOCIATION,
THE REGIONAL AIRLINE ASSOCIATION, AND
THE NATIONAL AIR CARRIER ASSOCIATION

Docket CDC-2020-0013

ATTACHMENT 13

qrulepubliccomments

From: LAVIN Douglas [LAVIND@iata.org]
Sent: Wednesday, March 01, 2006 10:15 AM
To: qrulepubliccomments
Subject: Comments on Proposed CDC Rule: "Control of Communicable Diseases"

Attachments: IATA CDC NPRM FINAL.doc

IATA CDC NPRM FINAL.doc (77 KB...

To whom it may concern,

Attached please find comments by the International Air Transport Association on the CDC proposed rule "Control of Communicable Diseases" (Docket 42 CFR 70,71)

Thank you for your consideration.

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<<IATA CDC NPRM FINAL.doc>>

BEFORE THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR DISEASE CONTROL AND PREVENTION

In the matter of:	)	
	)	**DOCKET**
Control of Communicable Diseases	)	**42 CFR Part 70/71**
	)	

COMMENTS OF THE INTERNATIONAL AIR TRANSPORT ASSOCIATION

Notice of Proposed Rulemaking on Control of Communicable Diseases

42 CFR Parts 70 and 71

(Federal Register / Vol. 70, No. 229, November 30, 2005)

Communications in respect of this document should be addressed to:

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BEFORE THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR DISEASE CONTROL AND PREVENTION

In the matter of:	)	
	)	**DOCKET**
Control of Communicable Diseases	)	**42 CFR Part 70/71**

COMMENTS OF THE
INTERNATIONAL AIR TRANSPORT ASSOCIATION

The International Air Transport Association (IATA), the industry association representing 265 of the world's scheduled international airlines - including nearly all foreign and domestic carriers serving the United States - is pleased to provide its comments to the above-referenced Notice of Proposed Rulemaking (NPRM).

The protection of public health is an important obligation of government. The means taken to do so should to the greatest extent possible seek to ensure that obligations imposed upon the civil air transportation sector do not unduly affect the ability of airlines to operate their services in an efficient manner both within the United States and to and from the United States. Obligations imposed must also be designed to result in the achievement of the stated purpose for implementation. Industry input is therefore essential for the development of regulations that achieve governmental objectives with the least disruption of airline operations and greatest cost efficiencies.

These comments will focus on provisions in the NPRM that are of greatest concern to IATA and its members. IATA's comments on passenger data collection proposals focus on their implications to flights coming into the United States from foreign destinations. IATA defers to individual U.S. carriers and the Air Transport Association of America (ATA) on issues related to domestic travel. Further, IATA recognizes that a number of its U.S. and non-U.S. members are

filing their own comments on the NPRM. IATA's submission is designed to complement these individual airline comments by focusing on the global implications of this proposed regulation.

IATA, and other industry bodies, have in the past provided comments in respect of initiatives of other departments and, in particular, have provided extensive comments to the Immigration and Naturalization Service (INS) in respect of proposals made by the INS regarding passenger manifest reporting requirements as published in Federal Register/ Vol.68, No. 2, January 3, 2003. IATA recommends that CDC consult the above-referenced prior IATA INS NPRM response in order to provide additional context for the IATA submissions that follow in this NPRM response.[1]

The following are specific comments on particular sections of the NPRM that are of greatest concerns to our membership:

Passenger Information
The Proposed Reporting Requirements
42 CFR §70.4- 70.5 and §71.10 - 71.11

The proposal of greatest concern to air carriers relates to requirements for submission of passenger information to CDC, including data elements well beyond those collected by airlines during the reservations process and currently required by APIS for international flights and information additional to that collected for other commercial and governmental purposes.

The proposed regulation in §70.4 and §71.10 requires that an airline operating interstate or international service, respectively, request specified information from passengers, retain it in an electronic database for sixty days and make such information available to CDC within twelve hours of a request. The proposed new data elements consist of: (i) emergency contact; (ii) telephone number; (iii) e-mail address; (iv) current home address; (v) traveling companions; and (vi) return flight. While IATA is determined to support CDC's efforts to gather relevant

[1] IATA views it as imperative that definitions used in any Rule are consistent with those definitions already used by other relevant government agencies.

passenger information, we strongly believe that the proposal as drafted regarding the types of data and method by which airlines should collect this information is inconsistent with operational or business realities. Further still, as there is no mandatory requirement for passengers to provide this data, compliance with the regulation is likely to be low and will therefore not fulfill the stated purpose of the proposed Rule. The following sets forth our primary concerns in this regard.

1. Cooperation Between CDC and CBP: Creating a Single Window

In 2001 the U.S. Department of Treasury instituted a regulation implementing the Aviation Transportation Security Act (2001) that identified INS (now part of U.S. Customs and Border Protection (CBP)) as the single U.S. Government point of contact for airlines to provide required passenger and crew information to the U.S. Government. Further manifest requirements instituted under the Enhanced Border Security and Visa Entry Reform Act (2002) also identified CBP as the single point of contact for airline data, even though the data might be required by other U.S. government agencies, such as Animal and Plant Health Inspection Service or the Transportation Security Agency (TSA).

IATA member airlines invested many millions of dollars to develop and implement systems to meet CBP's requirements in this regard. Our members' systems are now designed to feed this passenger information to this single window. IATA is therefore very concerned about CDC's proposal to create a new regulatory scheme calling for the collection of passenger data through a completely new collection process managed by a separate agency. Our major concerns can be summarized as follows:

- **Lack of standardization**: IATA has worked closely with international bodies, such as the World Customs Organization (WCO) to standardize transmission of passenger data requirements. The current standard for data transmission is UN/EDIFACT. Airlines have designed their single window to comply with the UN/EDIFACT protocols. Introduction of a U.S. protocol outside of the UN/EDIFACT standard will reduce the ability of airlines to achieve the objectives of the NPRM.

- **Duplication:** It is unreasonable for airlines to be expected to comply with two separate collection points for passenger information from the same government. This is particularly true in this instance when much of the information that CDC proposes to collect is already being collected from the airlines by CBP. As noted below the cost of developing and implementing systems to collect this information is substantial. To now require a duplication of this effort to meet the same government's needs cannot be justified.
- **Lack of coordination:** The NPRM states that while the agency is currently developing a Memorandum of Understanding with Department of Homeland Security (DHS) regarding access to PNR data, data sharing among government agencies is uncertain and CDC must press ahead with its own initiative. Airlines should not be required to make substantial investments because one part of the U.S. Government is unwilling or unable to coordinate with a sister agency. Rather than requiring a second window, CDC should focus its efforts on expediting an MOU that allows for the sharing of this PNR information. IATA would recommend that the passenger data provisions of this NPRM be withdrawn if the Department of Health and Human Services (HHS) and DHS have already entered into an MOU regarding data sharing,
- **Difficulty of compliance**: IATA is concerned that multiple, overlapping and potentially inconsistent data collection windows will result in a potential degradation of the collected information.
- **Consistent data sharing**: Clearly any successful effort to address communicable disease must be international in scope. As the representative of international airlines, IATA strongly believes that governments addressing the same challenges should focus on ensuring that their efforts be harmonized so as to promote effective regulation and to minimize the disruption to the international aviation system resulting from these

regulations. IATA therefore urges the U.S. Government to seek to harmonize its data collection requirements with those of its sister agencies in other governments. Multiple U.S. Government data collection methods and regulations will serve to minimize the opportunity to harmonize data collection and to share the data across borders generally.

2. The Point of Sale and Point of Departure Data Collection Scenarios

In addition to concerns about multiple data collection windows, IATA also believes that the method proposed by CDC to collect this information does not reflect a realistic approach to address the issue. Further, the NPRM is based upon the premise that every airline collects the required data on every passenger and stores this data for lengthy periods, easily retrievable in the event of a public health emergency. As mentioned above, the cost burden – even by CDC's own conservative estimates – will run into the tens of millions as this solution requires many entities – airlines, GDSs, travel agents, passengers, to name a few - to fundamentally change the way they operate. The potential duplication of passenger data storage by multiple airlines is unnecessary and unduly burdensome upon the industry. CDC could and should share the burden for data collection by creating its own database and minimizing the burden of collection, the duplication of storage and the risk of data privacy issues. IATA would be happy to work with CDC and other agencies to resolve this issue and assist in providing solutions, such as the Passenger Locator Card.[2]

CDC in its Regulatory Impact Analysis (RIA) envisages two approaches by which an air carrier could obtain the required information. The first scenario, CDC's preferred option, the so-called "Point of Sale" (POS) method for data collection, is focused on collecting the information from travel agents and Global Distribution Systems (GDSs). The second scenario, the "Point of Departure" (POD) method of data collection, is proposed to be accomplished at the check in or departure desk. The POS and POD approaches were examined in the RIA under the following

[2] See information on Passenger Contact Information Working Group (PCIWG) below.

three scenarios: Option 1: International Inbound flights only (IATA's main focus); Option 2: International inbound plus large and medium hubs; and Option 3: International inbound plus all domestic transportation.

The RIA accompanying the NPRM operates from a flawed understanding of the relationship between airlines and travel agents and, at its heart, contains a misunderstanding of the serious operational impact of passenger check-in delays at congested hub-airports.

- **The Point of Sale Method of Data Collection: Unrealistic Assumptions**

IATA believes that the POS passenger data collection scenario as presented is sufficiently flawed as to be unworkable if the goal is collection of information from the largest number of passengers possible. The RIA on page 1-3 makes the following observation, which underlies much of the analysis in respect of the POS method:

> Rather than using an assumption that costs will be minimal due to access to other government databases, the main analysis in this Regulatory Impact Analysis (RIA) assumes that the airlines share data with the GDSs and travel agencies, minimizing duplicate information gathering and streamlining the data collection process.

The success of the POS passenger data collection method depends on GDSs and travel agencies reciprocally **sharing information with the airlines**, something that is not done today on a broad scale. As written, the NPRM places a disproportionate burden upon airlines in comparison with travel agents - who have an earlier opportunity to obtain the data required by CDC - as a significant portion of inbound international travel is sold by travel agents located outside the U.S. Agents are very reluctant to share client contact information with their airline competitors. As noted by British Airways in its submission on this NPRM: "[T]ravel agents will be reluctant to collect and store in carriers' reservation systems their clients' addresses and phone numbers fearing the carriers might contact their clients directly." It is unduly burdensome for CDC to impose an obligation on airlines to provide data to which they have very limited access or

control[3]. IATA recommends that any POS data collection requirement be imposed on travel agents directly, rather than airlines themselves. Additionally, the NPRM states that airlines would not incur data collection costs under a POS scenario. This erroneous assumption ignores bookings made directly with airlines through their call centers. The airline should not become the de facto agent of CDC in soliciting, collecting and storing such data, while at the same time being one step removed from the creation and storage of much of this data, and subject to fines and penalties for failure to meet the provisions of the regulation.

- **The Point of Departure Method of Data Collection: Significant Operational Challenges**

On page 71916 of the NPRM, CDC estimates that it will require an additional 1.5 minutes for the collection of the required passenger information from non-frequent flyers at the point of departure. IATA would suggest that the 1.5-minute timeframe has been substantially underestimated. The collection of such data requires interrogation of the passenger and an explanation as to why the data is required. The passenger then has to locate the data, which may not always be ready available (possibly located in hold baggage). Once the data has been located, the agent must input this data into the airline's system. This three-step process could, in even the most optimistic of scenarios, double the timescale proposed in the NPRM.

Even if the premise proposed in the NPRM is accepted, the analysis suggests that airlines can achieve this 1.5-minute target through the hiring of additional personnel that could be provided with portable workstations to gather the information efficiently. Unfortunately, this analysis fails to note the challenge of introducing additional airline personnel at space-constrained airports. Further, linking a wireless workstation to existing IT systems would require an all-new industry practice with, in all likelihood, custom-developed technology. Even more troubling is the lack of analysis on the cumulative or "cascading" effect of individual passenger data input

[3] The issue of control of data extends beyond the simple case of travel agents to include codeshares and interline flights. Further still, the difficulty in obtaining data on transfer passengers should not be underestimated.

delays upon passengers further behind in the check-in line. For the first passenger in line, a 1.5-minute delay is barely noticeable. For the 30th passenger in line, this delay becomes substantial, even with the addition of extra airline staff to perform data input. The delays cascade, eventually leading to operational delays resulting from the inability of passengers to check-in in a timely manner – a matter of considerable concern at airport hubs such as London Heathrow or Frankfurt and others that are capacity constrained with exceedingly tight slots for aircraft takeoffs and landings. Each of these issues reflects a significant indirect cost of the proposed Rule which CDC has failed to take into account. It is possible that operational difficulties resulting from the POD scenario could lead to annual incremental costs due to flight cancellations, loss of slots etc. that could conceivably exceed the direct costs related to staffing and IT.

In supporting the POD proposal, the NPRM cites a Harvard University telephone survey, indicating a 94% willingness on the part of passengers to be contacted by public health authorities under very specific circumstances: the survey's first question was as follows: "If you had been on an airplane with someone who had a highly contagious disease such as SARS, tuberculosis (TB) or meningitis, would you want or would you not want public health authorities to warn you of your potential exposure?" IATA believes that the response rate cited above cannot be extended to all passengers. Furthermore, all the respondents to the Harvard University survey were reported as being American citizens or residents. This represents a major sampling flaw in the poll, as it must be questioned whether the same response would be elicited from foreign nationals about a foreign government, i.e. the United States, accessing and storing personal data. To ignore this entire class of passengers is to create a survey result that is of questionable validity. IATA believes that the positive response rate would be different if it were made clear to the respondent that such a collection system could results in check-in delays of up to 90 minutes and potentially frequent flight cancellations at certain busy airports.

- **The Challenge of Voluntary Passenger Provision**

As CDC is aware, rates of voluntary provision in the United States of next of kin contact data have historically been low.[4] The NPRM places the obligation on airlines to comply with new data collection and storage requirements and to report data to CDC upon request, with significant penalties for non-compliance. However, passengers are under no obligation to provide their contact data whether via the POS or POD scenarios. IATA questions whether the optimistic scenarios proposed by CDC would be achievable given low rates of passenger compliance.

- **The Costs of Data Collection Implementation**

Questions of cost burdens inevitably arise with projects of the magnitude of the required reprogramming of IT systems necessary for both the POS and POD scenarios. As CDC itself has noted in the NPRM at page 71916, "CDC assumed major and foreign airlines will each incur reprogramming costs of $10 million." As noted earlier, this figure ignores incremental costs associated with soliciting data from passengers, not just those who ultimately fly, but also those who book travel but later cancel, or the costs associated with gathering information from those who merely make a booking inquiry. In IATA's view, the CDC cost estimates are very much on the conservative side and will have a negative impact in an economic environment where North American carriers lost $10 billion in 2005 with further losses anticipated in 2006.

3. Privacy Issues and International Law

The CDC RIA, at page 38, acknowledges that full implementation of the POS approach would conflict with existing international law regarding data sharing and privacy:

> ERG assumes that the POS scenario can largely be implemented, but recognizes that there are impediments to setting up this approach. For example, Amadeus, one of the four dominant GDS companies, is foreign owned and stores collected passenger information in Germany; it is governed by German law regarding data

[4] One IATA member carrier has indicated that in its experience this rate of voluntary provision of data is on the order of approximately twenty percent. Another IATA member in a survey that it conducted found a compliance rate that was even lower.

> sharing and privacy. ***Complete implementation of the POS scenario would thus require changes in international law***.[5]

IATA is reluctant to support any data collection scheme that, on its face, violates international law. Making any rule final, without having first resolved the significant conflicts between various countries' national laws would place airlines in untenable position of deciding which law to follow and which law to violate. CDC should be aware of the significant penalties that exist in many jurisdictions for violation of data privacy laws. The above RIA language assumes that rule changes in jurisdictions other than the United States can be achieved within the timeframe for compliance. However, recent experience suggests otherwise. The protracted process of implementing an agreement between the E.U. and the U.S. on access to PNRs has demonstrated that no such assumption should be made. The prospects in this regard are further complicated by the recent opinion of the Advocate General of the European Court of Justice that the 2004 E.U. – U.S. agreement on transfer of passenger data for use by CBP is invalid on jurisdictional grounds and should be annulled. If the E.U.-U.S. agreement founders, it becomes difficult to see how the CDC proposal can be squared with the significant conflicts of laws issue that arises.

Although the quotation referenced above refers to POS, IATA believes that the POD proposal would also expose airlines to fines and or prosecution in those countries for failure to comply with the applicable foreign laws. Many IATA carriers store passenger data in Europe, raising further concerns about potential conflicts between the U.S. and the E.U. IATA is also concerned that there is no indication in the NPRM that CDC performed any substantive review of foreign privacy legislation, consulted with CBP or consulted with international organizations such as ICAO or WCO to determine what would constitute internationally acceptable categories for data collection. There is also no indication that CDC has consulted with relevant governments on this issue in advance of the publication of the NPRM. IATA would submit that the legal limits to cross-border data transfer, in and of themselves, render the POS and POD scenarios unworkable.

[5] Emphasis added.

Reporting Death or Illness Among Passengers:
42 CFR §70.1- 70.3 and §71.1, and §71.6-71.7

IATA recognizes the importance of reports from airlines of death or illness among passengers relating to suspected communicable disease. IATA is nonetheless concerned that the definition of "ill person" as proposed in §70.1 and §71.1, with its clinical descriptions of symptoms, does not serve to assist lay persons/crew in ascertaining whether in fact a passenger suffers from a communicable disease, a chronic condition, or an allergic reaction. CDC is therefore encouraged to modify its proposed definition of "ill person" to a form similar to that which will soon be adopted by the International Civil Aviation Organization (ICAO) to be included in the Aircraft General Declaration:

> A communicable disease should be suspected when a passenger or a crewmember has a body temperature of 38°C (100°F)[6] or greater **and** exhibits one or more of the following signs and symptoms:
>
> - Appearing obviously unwell
> - Persistent coughing
> - Impaired breathing
> - Persistent diarrhea
> - Persistent vomiting
> - Skin rash
> - Abnormal bleeding
> - Reduced mental clarity

This language meets the objectives of the proposed amended § 70.1 and 71.1, and in fact closely parallels the amendments proposed in the NPRM, while better reflecting the limits on cabin crew observation of passenger condition.

A definition focusing on pinpoint descriptions of symptoms over specified periods of time is inappropriate for airline cabin crew whose safety and service-related duties may not afford them the opportunity to make the necessary observations. Crew may not be aware that a passenger is running a temperature or has other symptoms, unless brought to their attention by the

[6] By measurement with oral thermometer.

passenger. Passengers themselves may be reticent to provide details of their condition to crew, particularly as to diarrhea or vomiting.

IATA further notes that a report to CDC of every death on-board an aircraft that is not evidently related to an apparent communicable disease, such as a cardiac arrest following an angina attack, may lead to a substantial increase in reports to CDC with no public health benefit. IATA would recommend that the proposed requirements in §70.2 be amended to refer to "death from a suspected communicable disease"

IATA supports the proposed change to the point of contact from local health authorities to CDC. IATA believes that this provision provides a clarity currently lacking in 42 CFR Parts 70 and 71. Designation of a CDC official as the point of contact simplifies matters for an airline that might find itself having to choose among several local health agencies and officials for such notification. However, the requirement that such a report be made within one hour prior to landing may not be realistic depending on the duration of the flight and the time of passenger death. Further, the proposed reporting requirement introduces an undue element of rigidity into such reporting. Moreover, the obligation to conduct regular drills and exercises adds an additional cost element.

These comments will not address in depth the issue of proposed provisional quarantine measures, other than to note that CDC refers to no provision in the NPRM for notification of an airline when an airline's crewmembers are among those who may be selected for provisional quarantine. IATA would request that CDC consider adding a mechanism for notification of affected airlines by CDC in the event or provisional quarantine of crew as this has an important impact upon airline operations. Additionally, IATA is concerned that provisional quarantine may take place at an airport. Although cognizant of the fact that restriction on movement is a key aspect of preventing transmission of disease, airport facilities are not designed to accommodate passengers – particularly those who may be ill - for short or long periods of time. Issues arise with respect to reconciliation of baggage, medical and hygiene facilities and general well being of

passengers and crew. IATA would urge CDC to establish quarantine facilities off-airport and to suitably equip these facilities to deal with large numbers of displaced people for adequate time periods. It should be emphasized that carriers should not bear the expense related to quarantine arrangements since this is inherently a government function.

4. Industry Input

As noted above, IATA recognizes the legitimate need of the U.S. Government to implement regulations that are designed to effectively control communicable disease that may be transmitted while traveling by air. While we are greatly concerned about the effectiveness of the NPRM as drafted, airlines are committed to working closely with the U.S. Government to find solutions for these difficult challenges and to provide comprehensive industry input into this process. To that end, as CDC is aware, IATA and the ATA created a Passenger Contact Information Working Group (PCIWG) prior to the issuance of the NPRM. The terms of reference of this group include:

- Studying emerging government requirements for passenger contact information;
- Determining required common data elements;
- Developing guidelines for the collection of accurate passenger contact information in a timely manner;
- Liaison with members of the IATA Medical Advisory Group; and
- Liaison with travel agent organizations to obtain their support for the collection and sharing of passenger contact information.

The group consists of representatives from IATA, ATA and their respective airline members that have reservations and Departure Control System (DCS) expertise, and equipment and systems vendors.

The PCIWG recently met in Atlanta with airline, World Health Organization (WHO), CDC and DHS (including CBP and TSA) representatives in attendance. The PCIWG will seek to assist CDC in developing regulatory amendments that reflect international best practice. The

group will also endeavor to align its proposed amendments with the goal of harmonization of varying governmental requirements. Moreover, such efforts will enable all participants to take advantage of past lessons learned by airlines and regulators from efforts such as those made in respect of Severe Acute Respiratory Syndrome (SARS). A coordinated international effort would help CDC address any possible conflict of laws in matters such as related to data privacy.

In conclusion, IATA believes the underlying assumptions of the NPRM are very conservative and not reflective of true difficulties and costs associated with the implementation of the proposals as they relate to data collection. Further, IATA does not believe that due consideration has been given to the impact of the proposed regulations upon carriers operating to the United States, nor to potential solutions that utilize government funding and resources.

IATA appreciates this opportunity to provide comments to CDC. Any request for clarification or additional information required from IATA should be directed to the undersigned.

Respectfully submitted,

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JOINT COMMENTS OF
AIRLINES FOR AMERICA,
THE INTERNATIONAL AIR TRANSPORT ASSOCIATION,
THE REGIONAL AIRLINE ASSOCIATION, AND
THE NATIONAL AIR CARRIER ASSOCIATION

Docket CDC-2020-0013

ATTACHMENT 14

Centers for Disease Control and Prevention
CDC 24/7: Saving Lives, Protecting People™

Quarantine and Isolation

CDC Report as Required by the 2017 Control of Communicable Diseases Final Rule

Background

The Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC), published the final rule for the Control of Communicable Diseases on January 19, 2017, which included, among other provisions, amendments to the foreign quarantine regulations for the control of communicable diseases. The rule became effective on March 21, 2017. See 82 FR 6890.

CDC regulations at 42 CFR 71.4 (airlines) and 42 CFR 71.5 (vessels) relate to the transmission of passenger, crew, and flight/voyage information to CDC for public health purposes. Under these regulations, the operator of any airline or vessel arriving into the United States must make specified passenger and crew contact information available to CDC, to the extent that such information is available and already maintained by the operator, within 24 hours of a CDC request. This request is made only after CDC has determined the presence of a confirmed or suspected case of a communicable disease on board an aircraft or ship. For more information about CDC's contact investigations for communicable diseases on aircraft, see Protecting Travelers' Health from Airport to Community: Investigating Contagious Diseases on Flights.

42 CFR 71.4 (airlines) and 42 CFR 71.5 (vessels) both contain subsections that state:

No later than February 21, 2019, the Secretary or Director will publish and seek comment on a report evaluating the burden of this section on affected entities and duplication of activities in relation to mandatory passenger data submissions to [U.S. Department of Homeland Security, Customs and Border Patrol] DHS/CBP. The report will specifically recommend actions that streamline and facilitate use and transmission of any duplicate information collected.

This report evaluates the potential duplicative burdens that these regulatory provisions may have created on the airline and ship industries since they entered into effect on March 21, 2017. It also makes additional recommendations based on these findings and solicits public comment. CDC accepted public comment from February 12, 2019 through March 14, 2019.

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Partner Outreach

On February 26, 2018, air and maritime experts in CDC's Division of Global Migration and Quarantine (DMGQ) met with CDC air and maritime analysts to discuss whether any changes to data transmissions from airlines or vessels had been observed since these regulations went into effect. These subject matter experts said no changes had been noted or reported to CDC since the final rule became effective. These experts also provided a list of external partners who would be able to best inform the evaluation of additional burdens the final rule may have caused. On April 24, 2018, CDC contacted the following seven federal and non-government partners whose air or maritime operations may have been affected by the updated provisions regarding the mandatory submission of passenger data upon request.

- Airlines for America (A4A)[1]
- Cruise Lines International Association (CLIA)
- Delta Air Lines, Inc.
- International Air Transport Association (IATA)
- International Civil Aviation Organization (ICAO)
- U.S. Customs and Border Protection (CBP), National Targeting Center (NTC)
- U.S. Coast Guard (USCG)

The correspondence sent to these partners included the following questions:

1. *Since publication of the communicable diseases final rule on January 19, 2017, with effective date March 21, 2017, have you made any changes to your procedures in response to the publication of data collection requirements under 42 CFR 71.4 (71.5)?*
2. *Has the publication of the data collection requirements under 42 CFR 71.4 and 71.5 caused your agency or organization additional burden? If so, please describe any additional burden: Administrative? Operational?*
    - *What types of staff are involved, and approximately how much time per staff type is required (e.g., legal one hour, data management two hours)?*
3. *Did the publication of the requirements specified in 42 CFR 71.4 (71.5) result in duplication of activities between your agency or organization and CDC?*
    - *If so, please explain the new duplicative activities:*
        - *What types of staff are involved, and approximately how much time per staff type is required (e.g., legal one hour, data management two hours)?*
4. *If you responded in the affirmative to questions 1-3, please let us know of any recommendations to minimize duplication of activities or other burdens that have resulted [from] the publication of 42 CFR 71.4 and/or 42 CFR 71.5.*
    - *If these recommendations were put in place, what do you expect would be the change in time spent by different types of staff (e.g., legal consultation one hour, data management two hours)?*

Partner organization representatives were informed that their participation in the evaluation was strictly voluntary and would not impact the organization's relationship with CDC. A reminder correspondence was sent on April 30, 2018.

Of the seven partners contacted, CDC received feedback from five. Four of these partners responded that their organization or agency had not experienced any increased burden or duplication of activities in response to the publication of data collection requirements under 42 CFR 71.4 or 71.5. Since no duplication was reported, these partners did not provide any recommendations to minimize duplication.

While the remaining partner also reported no additional burden beyond usual work duties associated with 42 CFR 71.4 and 71.5, the organization made the following statement: "Although we have not observed specific duplication of activities we do recommend that the CDC utilize existing data feeds provided to CBP via the Advance Passenger Information System (APIS), rather than requiring establishment of a separate channel of reporting. This would not necessarily result in a net decrease in work for our staff, but it would help lessen data privacy concerns for the airline and its customers. We have not observed a meaningful increase in workload, and as such do not have any recommendations for minimization of duplicative activities."

CDC does make use of information from CBP's National Targeting Center (NTC) via APIS for the purposes of public health contact investigations, to the extent CDC experts believe that NTC's databases are the most up-to-date and accurate source of relevant data. To facilitate this process, CDC has analysts co-located at NTC who conduct data searches to supplement passenger contact information provided by airlines. However, for the following reasons, CDC must still obtain certain data first from airlines:

- Only information directly from airlines can produce a targeted partial manifest in the rows or seats most at risk of exposure from an infectious traveler. Data from CBP's NTC can quickly produce a manifest of the entire aircraft, which is useful in only a minority of events.
- Information directly from airlines is essential to quickly identify infants in arms (information not contained in APIS) and their co-travelers. This information is critically important for certain infections for which infants may be at greater risk of serious disease or less likely to be vaccinated.
- Information directly from airlines is essential in quickly determining whether an individual remained in their assigned seat from departure to landing.
- In some cases, reconciliation of data between airlines and CBP is not complete when an individual deplanes during a layover and does not re-board.
- Finally, information from CBP does not include the configuration of an aircraft cabin (such as layout of seats and bulkheads), which is critically important when determining which passengers may have been exposed to a communicable disease.

To summarize, contacting an airline first is of the utmost importance in establishing a basic set of information about certain travelers and aircraft configuration, although there are instances when even airlines are unable to confirm travelers' seating locations throughout flights. In keeping with current practice, to the extent CDC can obtain information from CBP, CDC will minimize additional requests to airlines.

In summary, no increased burden or duplication of effort was identified as a consequence of the 2017 final rule.

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Analysis of CDC Data

Air contact investigations

Air contact investigations are usually initiated after travel, when infected travelers might be identified by a doctor or local public health department and reported to CDC. Potential contacts typically include passengers in nearby rows or seats and crew that worked in the section of the airplane where the ill traveler sat. While airlines usually assess their crew, CDC works with health departments to notify travelers about their possible exposures. After receiving input from partners that the regulations created no additional burden, CDC analyzed the timeliness and completeness of data received from airlines from before to after these regulations went into effect. In addition, CDC analyzed whether changes in timeliness and completeness of data from airlines affected the quantity of data sent to health departments after additional data searches at NTC by CDC. This analysis focused on 1) the time between manifest request to airlines and the receipt of data (timeliness), 2) the fraction of each requested data element (first name, last name, U.S. address, phone1, phone2, email address, seat #) for which data were provided by airlines (completeness), and 3) differences in the amount of data provided to health departments after CDC engaged additional resources at the NTC. The third analysis may indirectly assess the quality of data provided by airlines. The underlying assumption was that if airlines provide better data to CDC, then CDC, using supplementary data from CBP, may be able to transmit more contact information to health departments. It should be noted that the quality of data available to airlines depends on their customers providing accurate data when purchasing tickets. Since there is not a mechanism in place to ensure that travelers provide accurate contact information to airlines, airlines may not have access to accurate contact data. Airlines might also not have access to passenger contact information if the tickets were bought through third-party vendors.

This analysis focused on data provided for international flights on which a communicable disease of public health concern was reported. To assess timeliness and completeness, CDC extracted a convenience sample of contact investigation data from CDC's Quarantine Activity Reporting System for 51 flights from the period preceding publication of the final rule (flights occurred between June 1 and December 8, 2016) and 48 to 50 flights after the regulations went into effect (flights occurred between June 13, 2017, and January 12, 2018).

The timeliness of data transmissions appeared to improve slightly after the regulations went into effect (Table 1). Requests were divided by urgency with tuberculosis investigations typically classified as non-urgent because tuberculosis cases in travelers are often diagnosed weeks to months after the travel occurred and it takes weeks to years before a person infected with tuberculosis would begin to experience symptoms. In comparison, the time to develop symptoms after exposure (incubation period) is typically much shorter for other diseases (e.g., measles, meningococcal disease [illness caused by *Neisseria meningitidis* bacteria], pertussis [whooping cough], and rubella [German measles]), and less time is available to provide preventive measures. Prior to the regulations going into effect, urgent requests typically specified 24 hours for airlines to return data to CDC. In comparison, prior to the regulations, most non-urgent requests specified either 48 hours (if requests were made during the week) or 72 hours (for requests made over the weekend). However, after the regulations went into effect, all urgent and non-urgent requests specified 24 hours. For the 51 flights that occurred before the regulations went into effect, 44 investigations were non-urgent. Among the 50 flight investigations included in the post-effective-date analysis, 39 were non-urgent.

Before the regulations went into effect, airlines returned contact data for urgent requests within 24 hours for 57% of manifest requests (4 out of 7). In addition, contact data were provided after 6 days for 29% of the urgent requests (2 out of 7). In comparison, after the regulations went into effect, contact data were provided within 24 hours for 64% of the CDC requests (7 out of 11), and contact data were provided within 3 days for 100% of urgent requests.

Table 1. Time from CDC request to receipt of data from airlines before and after March 21, 2017, the effective date for 42 CFR 71.4 (airlines) and 42 CFR 71.5 (vessels)

	Before the effective date (51 flights between June 1 through December 8, 2016)		After the effective date (50 flights between June 13, 2017, and January 12, 2018)	
Time between request and receipt of data from airlines	**Urgent requests (e.g., measles, meningococcal disease)** [a]	**Non-urgent requests (e.g., tuberculosis)**	**Urgent requests (e.g., measles, meningococcal disease)**	**Non-urgent requests (e.g., tuberculosis)**
<24 hours	4 (57%)	5 (11%)	7 (64%)	9 (23%)
>=24 hrs to <72 hrs	1 (14%)	18 (41%)	4 (36%)	10 (26%)
>72 hrs to <144 hrs	0%	10 (23%)	0%	9 (23%)
>144 hrs	2 (29%)	11 (25%)	0%	11 (28%)

Note: There are too few observations to conduct statistical tests to identify differences between before and after the regulations went into effect.

[a]CDC typically required that airlines provide data for urgent requests within 24 hours.

The completeness of data received was assessed based on percentage of contacts for whom first name, last name, seat number, one phone number, two or more phone numbers, email address, and complete or partial address were provided. The email and phone number fields are fairly straightforward, as information is either present or missing for each traveler. Address information is more challenging because there are a number of fields that may be partially complete. This analysis included three address categories: category 1: no address information; category 2: any address information (e.g., street address **or** city/state **or** zip code **or** foreign country); and category 3: complete address information (e.g., street address **and** city/state or zip code). In addition to traveler-specific information, airlines may include emergency phone

numbers or addresses. The assumption was that this emergency contact information could be used to reach a family member or friend of the traveler. These data were analyzed separately to identify the proportion of contacts for whom traveler-specific contact information was not provided but emergency contact information was provided.

Comparing data provided before and after the regulations went into effect, less information was provided for U.S. address categories, email address, and second phone number after the regulations went into effect. More data were provided for the first phone number and an emergency contact address. There was no significant difference for other categories (Table 2).

Table 2. Completeness of airline data provided to CDC before and after March 21, 2017, the effective date for 42 CFR 71.4 (airlines)

Airline manifest traveler data category	Before the effective date (51 flights from June 1 through December 8, 2016, n = 1,571)	After the effective date (48 flights from June 13, 2017, through January 12, 2018, n = 1,433)
First name	99.9%	99.9%
Last name	99.9%	99.0%
Seat number	99.7%	99.9%
U.S. address category 1 (any address information) [a]	28.5%*	21.1%
U.S. address category 2 (complete address information) [b]	20.0%*	15.9%
Emergency contact address information (if traveler information was missing)	1.7%	5.6%*
Email address	34.7%*	24.9%
Single phone number	37.3%	41.3%*
Two or more phone numbers	10.6%*	6.6%
Emergency contact phone number (if traveler phone numbers were missing)	0.1%	0%
Any information besides seat number	54.3%	49.7%

Note: * indicates that differences were significant at the 95% level based on both Fisher's exact test for pairwise comparisons and logit models that controlled for urgency of requests and for foreign vs. domestic carriers.

[a]Any address information (i.e., street address **OR** [city/state or zip code] **OR** foreign country)

[b]Complete address information, (i.e., street address **AND** [city/state or zip code])

CDC also assessed whether more complete data were provided by CDC to health departments after the regulations went into effect by reviewing the amount of data sent by CDC to health departments after the data were supplemented by information obtained from NTC. In general, the quantity of data provided by CDC to health departments increased after the regulations went into effect (Table 3). The number of travelers with full address information increased from 84.5% of 1,462 travelers before the regulations entered into effect to 95.1% of 1,375 passenger contacts after the regulations went into effect. In addition, two or more phone numbers were provided for more travelers after the regulations went into effect (53.8% vs. 43.4%). However, no statistical differences were found among the number of contacts for whom an email address was provided or for whom at least one phone number was provided. In total, CDC was able to provide at least one piece of contact information for 99.9% of travelers both before and after the regulations went into effect.

Table 3. Contact data sent from CDC to health departments before and after March 21, 2017, the effective date for 42 CFR 71.4 (airlines)

Traveler data category	Before the effective date (51 flights from June 1 through December 8, 2016, n = 1,462)	After the effective date (48 flights from June 13, 2017, through January 12, 2018, n = 1,375)
Seat number	99.7%	99.8%
U.S. address category 1 (any address information) [a]	84.5%	95.1%*
U.S. address category 2 (complete address information) [b]	93.8%	98.8%*
Emergency contact address information (if traveler information was missing)	0%	0%
Email address	78.9%	79.9%
Single phone number	92.1%	91.1%
Two or more phone numbers	43.4%	53.8%*
Phone or emergency or contact phone if traveler phone numbers were missing	1.8%	5.6%*
Any contact data	99.9%	99.9%

Note: * indicates that differences were significant at the 95% level based on both Fisher's exact test for pairwise comparisons and logit models that controlled for urgency of requests and for foreign vs. domestic carriers.

[a]Any address information (street address **OR** [city/state or zip code] **OR** foreign country)

[b]Complete address information (street address **AND** city/state or zip code)

Maritime contact investigations

In contrast to air contact investigations, most urgent maritime contact investigations, such as for measles, are undertaken before travelers disembark from vessels. In such instances, travelers may be informed of their exposures while they are still on vessels. In contrast, the process for air travelers is different because CDC must work with airlines to collect contact information post-travel. On occasion, cruise ship passengers might be diagnosed with, for example, tuberculosis after travel. In this example, their contacts would include cabin-mates, dining mates, traveling companions, friends, intimate partners, or any crew members (such as waiters, cabin stewards, day care personnel) with whom they had repeated or prolonged exposure (i.e., interacted with daily or for extended periods of time). In comparison, as noted above, almost all infected air travelers are identified after travel and their contacts typically include passengers in nearby rows or seats. On average, CDC conducted about 12.6 maritime contact investigations per year from 2010 through 2014; however, only 5.4 contact investigations per year were conducted after a traveler had disembarked from the vessel. An average of 55 passenger contacts per year were identified for maritime contact investigations between 2010 and 2014 (including passengers identified during contact investigations before the ill traveler disembarked)[2]. In contrast, when vessel crew members are identified for contact investigations, the crew are usually still on the vessel and easily located. On occasion, CDC may conduct a contact investigation for measles diagnosed after travel in which passenger contact information is sought; however, such events are so infrequent that data is very limited. Therefore, because of insufficient data, CDC did not attempt a maritime contact data analysis. In addition, CDC did not receive any feedback from vessel operators about changes in procedures or suggestions for improvement after the regulations went into effect.

Limitations

The analysis of air traveler contact data was limited by the availability of data and evolving processes to search for additional contact data at NTC. CDC did not have sufficient data to evaluate the timeliness of data receipt from airlines (Table 1) since most of the requests were not considered urgent. The analysis of completeness (Table 2) only included a subset of flights directly before and after the regulations went into effect. The numbers of investigations for each airline and for each disease varied across the two subsets. Such differences in the composition of requests may limit the ability to quantify differences directly attributable to the regulations. For example, Carrier A may always provide more contact data than Carrier B. In the before subset, there may be 5 flights with illnesses from Carrier A and 2 flights with illnesses from Carrier B. In the after subset, there may instead be 2 flights from Carrier A and 6 flights from Carrier B. In the statistical analysis, CDC attempted to control for U.S vs. non-U.S. carriers and for the urgency of requests; however, CDC was unable to control for all of the compositional differences between the before and after subsets to assess the impact of the regulation on completeness of data provided by airlines. The analysis of data sent to health departments (Table 3) may have been affected by changes in data availability at NTC or in CDC or CBP procedures at NTC that were unrelated to the regulations. As a result, the analysis of data sent by CDC to health departments should be considered as an overall assessment of the impact of the regulations plus ongoing improvements to data searching activities at NTC. Thus, the results shown in Table 3 may only be partially attributed to the regulations; some of the improvement in the amount of data sent by CDC to health departments may also have been due to improvements in NTC data searching capacity.

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Discussion

Upon review of input received from federal and non-governmental partners, as well as results from the analysis of CDC data, there is some evidence that timeliness has improved since these regulations went into effect; however, completeness of contact data provided by airlines generally has not changed. CDC found improvements for some data elements and that less data were provided for other data elements. Some airlines may be providing less complete data to improve the timeliness of data submission. However, at the same time, CDC has slightly increased the amount of data (specifically address information and second phone numbers) sent to health departments after supplementing data received from airlines with additional data obtained from CBP's NTC. CDC cannot assess whether the larger fraction of contacts with address information or more than one phone number has improved health departments' abilities to locate exposed travelers. In addition, CDC is unable to evaluate directly whether changes in timeliness or completeness of data provided by airlines led to the increase in data provided to health departments after supplemental searches for contact information at NTC. Finally, querying partners verified that publication of these regulations has not changed procedures or

operations nor added to the burden of transmitting data to CDC for public health purposes. The analyses presented here focused on data provided by airlines because CDC does not have sufficient data for a comparable analysis of data from maritime contact investigations conducted after travel. In addition, CDC did not receive any feedback from vessel operators.

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Recommendations

Because CDC did not find any evidence or receive information from partners that these regulations resulted in any additional duplication of efforts beyond that needed for a timely public health response, our recommendations are as follows:

1. CDC should continue to evaluate data collection requirements routinely to ensure that burden to respondents is limited to that needed to conduct CDC's public health mission. To ensure this evaluation, CDC's information collection approval for international data (OMB Control Number 0920-1180) must be renewed every three years and include requirements for soliciting public comment.
2. CDC should continue to work with partners, both federal and private sector, to improve the data collection process and minimize duplication of effort. CDC is in routine contact with aviation and maritime partners for the purposes of preventing the spread of communicable disease. If problems or duplicative processes are brought to CDC's attention, CDC should consider reasonable approaches to remedy the problem or reduce duplication while ensuring public health protections remain in place.
3. CDC should continue to ensure its data collection requirements reflect the most up-to-date technology and enhance overall efficiency so response times remain effective and CDC can facilitate timely public health action.

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References

1. A4A shared CDC's solicitation for feedback with all of its members: Alaska Airlines, American Airlines, Atlas Air, FedEx, Hawaiian Airlines, JetBlue, Southwest Airlines, United Airlines, and United Parcel Service.
2. Caroline E. Stamatakis, Marion E. Rice, Faith M. Washburn, Kristopher J. Krohn, Millicent Bannerman, Joanna J. Regan. (2017) Maritime illness and death reporting and public health response, United States, 2010–2014. Travel Medicine and Infectious Disease 19: 16–21.

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JOINT COMMENTS OF
AIRLINES FOR AMERICA,
THE INTERNATIONAL AIR TRANSPORT ASSOCIATION,
THE REGIONAL AIRLINE ASSOCIATION, AND
THE NATIONAL AIR CARRIER ASSOCIATION

Docket CDC-2020-0013

ATTACHMENT 15

BEFORE THE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

CENTERS FOR DISEASE CONTROL AND PREVENTION

In the matter of:

Docket ID: CDC-2016-0068

CONTROL OF COMMUNICABLE DISEASES

JOINT COMMENTS OF THE INTERNATIONAL AIR TRANSPORT ASSOCIATION, AIRLINES FOR AMERICA, CARGO AIRLINE ASSOCIATION, NATIONAL AIR CARRIER ASSOCIATION AND REGIONAL AIRLINE ASSOCIATION

Notice of Proposed Rulemaking on Control of Communicable Diseases
42 CFR Parts 70 and 71

(Federal Register, Vol. 81, No. 157229, August 15, 2016)

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October 14, 2016

BEFORE THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR DISEASE CONTROL AND PREVENTION

In the matter of:

Docket 42 CFR Parts 70/71

CONTROL OF COMMUNICABLE DISEASES

JOINT COMMENTS OF THE
INTERNATIONAL AIR TRANSPORT ASSOCIATION,
AIRLINES FOR AMERICA, CARGO AIRLINE ASSOCIATION, NATIONAL AIR CARRIER ASSOCIATION AND REGIONAL AIRLINE ASSOCIATION

The International Air Transport Association (IATA), the industry association representing 268 of the world's scheduled international airlines - including nearly all foreign and domestic carriers serving the United States - is pleased to provide its comments to the above referenced Notice of Proposed Rulemaking (NPRM).

A4A Airlines for America (A4A) joins in these comments, as do the other air carrier associations described below. A4A advocates on behalf of its members to shape public policies and measures that promote safety, security and a healthy U.S. airline industry. The Cargo Airline Association (CAA) is the nationwide trade organization representing the all-cargo air carrier industry. The members of the National Air Carrier Association are a diverse group of air carriers providing non-scheduled and scheduled passenger and cargo services. NACA carriers fill a unique niche in the air carrier industry, offering services in response to ever changing demands by the U.S. military, the traveling public, and businesses. The Regional Airline Association (RAA) provides a unified voice of advocacy for North American regional airlines aimed at promoting a safe, reliable, and robust regional airline industry.

Overview

The protection of public health is an important obligation of government. The means taken to do so should to the greatest extent possible seek to ensure that obligations imposed upon the civil air transportation sector do not unduly affect the ability of airlines to operate their services in an efficient manner both within the United States and to and from the United States.

Obligations imposed must also be designed to result in the achievement of the stated purpose for implementation. Industry input is therefore essential for the development of regulations that achieve governmental objectives with the least disruption of airline operations and greatest cost efficiencies.

These comments focus on provisions in the NPRM that are of greatest concern to IATA, A4A, CAA, NACA, and RAA and their respective members. IATA's comments on passenger data collection proposals focus on their implications to flights coming into the United States from foreign destinations. Other points made in these comments, led by A4A, reflect the industry's concerns relating to controls applied to solely domestic US flight segments. Further, carriers may individually file their own comments about the NPRM. This submission is intended to complement any individual airline comments by focusing on the global implications of this proposed regulation.

CAA supports these comments, and further underscores that U.S. air cargo airlines operate in the global marketplace and while they do not carry passengers, any requirements proposed would be applicable to flight crew. Moreover, cargo airlines build their business model around time and efficiency of the service provided, so it is important to ensure the implications to cargo airlines are taken into account.

The following are specific comments on particular sections of the NPRM that are of greatest concerns to our membership:

General Comments

IATA, A4A, CAA, NACA and RAA represent the majority of international aircraft operators serving the U.S. market, and having common concerns, are submitting this joint response to the NPRM.[1] We appreciate this opportunity to submit comments on this Rulemaking, which, while less extensive than the Rulemaking under same title published in 2005, is predicated upon the same general concept. That being that aircraft operators should be mandated to develop new capabilities and processes to capture and store a comprehensive set of personally sensitive data for all passengers and crew carried on flights to the United States, and archive that data for an unspecified period of time to provide that data when so requested by CDC.

While we recognize a legitimate need to have processes in place to rapidly identify and locate persons who might have been exposed to a contagious disease while on an aircraft flying to the U.S., we believe the new obligations described in the NPRM seek largely to replicate data-exchange systems already deployed today. Airlines already transmit all passenger information that is made available to them in the booking process. The data elements described in the NPRM are either mandatory as part of APIS Quick Query (AQQ) manifests transmitted for every flight destined to the US, or possibly included in Airline Reservation System data (PNR) that is also transmitted several times for these same flights.

Additionally, we believe the NPRM may be premature, in that the proposed data reporting requirements (to the extent such elements are available and maintained by the airline) are seemingly contingent upon modifications being made to the existing CBP AQQ program, including addition of several burdensome data elements to that program's reporting requirement that are not currently required under the existing regulation. These additions include:

- Complete home address for all US citizens and Legal Residents

[1] Please note that many of the comments contained in the document mirror or are consistent with comments submitted by both organizations in response to CDC's similar NPRM, published 30 November, 2005.

- Primary Telephone Contact
- Secondary Telephone Contact
- E-mail Address
- Seat Number

While these data elements are permissible within the existing UN/EDIFACT PAXLST message standard, they are not currently part of the data element set authorized under existing AQQ requirements and would be quite burdensome to collect. Further, the CBP automated systems are not configured to capture and process such elements, nor are airline systems programmed to collect, format and transmit these elements to CBP via the DHS Portal. Programming efforts by both CBP and by airlines (or their system providers) would be significant and expensive, and, we believe, could only be contemplated following CBP's development and adoption of a Final Rule amending the existing AQQ regulations.

We understand that while some preliminary discussions have taken place between CDC personnel and CBP's Office of Field Operations, no commitments have been made at this time to modify the existing AQQ system, nor to initiate a separate Rulemaking to modify the regulations applicable to AQQ reporting requirements. However, irrespective of an amended AQQ regulation that may include a mandate for the additional data elements, it is important to note that the amount of time and resources to collect these new elements would likely be cost prohibitive and operationally unrealistic. Collection efforts to obtain data not provided at booking would have a substantial impact on airline operations, most notably to the check-in process.

While we will now address specific concerns relating to this Rulemaking, our general position is the same as taken in response to the 2005 NPRM. Systems are already in place that ensure that the U.S. Government receives the majority of data being considered in this Rulemaking on the day the aircraft in question arrives at a U.S. port of entry via AQQ manifesting. Significant additional information about each passenger is also being processed by the U.S. Government through provision of PNR information.

These separate data flows are being managed, processed and stored within U.S. IT systems, and could easily be shared between government Departments based upon need and in recognition of applicable data privacy concerns and regulations imposed on electronic data exchange by a number of foreign States. These existing systems, if properly developed and managed, obviate the need by aircraft operators to develop expensive and costly parallel systems that CDC acknowledges will be employed only occasionally.

Cost and Systems Impact

We believe the costs estimates contained in the Notice relating to IT and system enhancements to support CDC's proposed contact information transmission requirements are not sufficiently developed. We also believe much of the data discussed in the notice to be unrealistic, leading to an inaccurate conclusion of financial impact on both the Government and aircraft operators primarily focused on required IT system enhancements.

- It is our understanding a new and wholly separate Rulemaking process will need to be initiated by DHS/CBP to support changes to the existing data mandate within the AQQ regulation. This will come at a cost to Government not addressed in the Notice
- CBP systems must be developed to receive the five additional data elements mandated in the Notice that are not currently authorized by regulation
- Each airline and/or Service Provider system would then need to be modified to support the additional mandatory data element collection and formatting. A 2004 evaluation showed an average cost of USD 50,000.00 per new data element per airline system to be added to an existing UN/EDIFACT PAXLST messaging system. That number is likely no longer accurate, but is intended to demonstrate that real costs will be associated with the mandate described in Section 71.4
- Additional costs would then be incurred for testing and recertification of each operator's system

- As noted above, efforts to collect the five additional data elements alone would have a substantial and costly impact on airline operations. In its analysis, CDC has not adequately accounted for the industry burden and cost for collecting these new data elements

Absence of detailed costing analysis should warrant withdrawal of this Rulemaking in and of itself.

Ongoing Efforts with U.S. Department of Homeland Security and Customs and Border Protection to Improve Passenger Data Collection

While we understand that some limited discussions have taken place between CDC and DHS/CBP personnel on this topic, they have not resulted in any formalized plan to move forward in enhancing the AQQ message content – a principal objective of this Rulemaking. This cooperation should be the first accomplishment, in that it would then permit the U.S. Government itself to take complete ownership of the data it receives through a single aligned process that aircraft operators are already supporting effectively today.

We encourage CDC to expand its efforts to reach accommodation with CBP in order to reduce the impact on the private sector.

70.1 and 71.1 General Definitions:

IATA's Medical Officer has reviewed the revised and expanded definition of an "ill person", and reports that the updated definition better aligns with symptoms reporting guidelines published by ICAO in Note 1 to Standard 8.15 of ICAO's Annex 9 to the Convention on International Civil Aviation, and published by IATA in its Guidelines for Cabin Crew.

However, there is one difference, "Headache with stiff neck" does not appear in ICAO and IATA Guidelines. While IATA does not necessarily disagree with this addition, we would suggest it be modified to "Severe headache of recent onset with stiff neck". This would make it easier for non-medical personal. Indeed, headaches are frequent occurrences on airplanes and "stiff neck" is subjective. Adding

the qualifiers "severe" and "recent onset" would facilitate the cabin crew decision and still respect what CDC is trying to achieve.

"Fever": While it is true that 100.4 Fahrenheit accurately equals 38 degrees Celsius, 100.4 is not a very practical number on an aircraft in the sense that using a decimal number may be difficult depending on the type of thermometer in use.[2] The goal should be to make it easy for non-medical personnel to make a decision and not to be scientifically accurate to the decimal point. Since the US is using the Fahrenheit system, we would suggest the following wording: "the person has a measured temperature of 100 degrees Fahrenheit or greater (approximately 38 degrees Celsius)".

It is important to note that this expanded definition of "ill-person," applied in Part 70 of this Rulemaking for interstate operations within the United States, when combined with the proposed new pilot-in-command reporting requirements (§70.11), missing accommodation for the intermediary professional medical services employed by airlines today (§70.11), and a proposed two-hundred to five-hundred fold increase in penalties for violations (§70.19), creates an unrealistic and burdensome set of expectations for airlines, flight crews and medical teams.

Not only does the expansion of the definition of "ill person" place a greater burden on airline staff, the ambiguity of that definition amplifies the burden or at least raises questions as to the particular obligations of the flight crew to determine if someone is an "ill person." (For example: "Feeling warm to the touch" is subjective and undefined. Moreover, do flight crews have an obligation to conduct a physical examination of the passenger to determine warmth?). Under the OSHA blood borne pathogens standard, employers are prohibited from exposing crewmembers to blood or other potentially infectious materials. CDC should ensure it is not imposing obligations to be carried out by flight crew that could

[2] We assume that the fever-related discussion and proposal in the NPRM will not be read or interpreted as requiring that all carriers have the equipment (thermometers) onboard to determine fever. Not all carriers have them in their EMK or FAK (they are not required under the Federal Aviation Regulations). The NPRM, it should be noted, has two other ways to identify fever (warm to touch or history of fever) which we would like to ensure stay as viable options within the final rule.

expose employers to OSHA liability, such as, requiring crewmembers to conduct a physical examination of passengers to determine if they feel warm to the touch. Furthermore, defining our flight crews' obligations is especially important if those obligations would contribute towards a finding that they "reasonably should have known" something and which would open our members and their flight crews to possible violations and fines.

70.5 Requirements Relating to Travelers under a Federal Order of Isolation, Quarantine or Conditional Release

Section 71.4, as proposed, specifically calls upon airlines to transmit manifest data under this Rule only for flights "arriving into the United States". However, language contained in Section 70.5 and reference to the definition for the term "interstate traffic" as contained in 42 CFR 70.1 raises concern that CDC's intent could be to require both Pilot-in-Command notifications and manifest reporting upon "order" for a broader set of flights than was originally anticipated. A reading of the definition for "interstate traffic" would seemingly indicate that it applies to flights operated between points within the United States or between U.S. Possessions or Territories and points within the United States. Some confusion and concern has been expressed that by use of this term, and as that term is currently defined in 42 CFR 70.1, an interpretation might ultimately be adopted that requirements for manifest reporting upon "order" also apply for wholly domestic U.S. flight operations.

For wholly domestic travel, airlines currently do not nor are they obligated to capture and store the biographic and/or contact details described in Section 71.4. Passengers, regardless of their nationality, are not obligated to travel with or present a passport or other official travel document as a condition for boarding a flight operated within the U.S. or between the U.S. and its Territories or Possessions. Accordingly, no processes exist that would facilitate collection and storage of the data described in Section 71.4 for such flights. If it is CDC's intent to expand monitoring and reporting under this Rulemaking to domestic as well as flights entering the United States, the impact of the Rule on airlines and the costs associated with the Rule will be vastly higher than discussed in the NPRM.

For absolute clarity, we ask that CDC unambiguously describe and detail the flight operations for which it believes the proposed Rule would apply, including a defining statement that manifest reporting upon "order" shall not now, or in the future under this proposed Rule, be required for flights operating between points within the U.S. or its territories or possessions.

Lastly, in discussing the revision to 70.5, CDC requests comments from stakeholders regarding "the requirement imposed on conveyance operators to not 'knowingly' transport individuals under a Federal order…" We understand from this Rulemaking that CDC coordinates with TSA/CBP to add any public health Do Not Board passengers (DNBs) to the existing TSA No-Fly list for travel to/from/within the United States. Given the increased penalties proposed in 70.19 and 71.2 (and discussed further below), it is imperative we emphasize that an airline's ability to comply with this provision is fully and completely dependent on CDC continuing to work closely with TSA/CBP to ensure that all individuals under a Federal order and prohibited from traveling to/from/within the United States are incorporated into the current No-Fly/DNB process.

70.10 Public Health Prevention Measures to Detect Communicable Diseases

Section 70.10 authorizes CDC to conduct screenings at airports and other locations to detect the presences of ill persons using visual inspection, electronic temperature monitors or other means determined appropriate. This appropriately places the responsibility for screening on the CDC, rather than on the airport or airlines. CDC should bear the expense of purchasing and operating all equipment deemed appropriate or necessary. In addition, CDC should coordinate closely with DHS to avoid further inconvenience or delay of passengers and/or on-duty staff. Space requirements for the screening of passengers for signs of illness should not come out of airline leaseholds and airlines should not be asked nor bear any responsibility for paying rent to airports for space utilized by CDC. Additionally, CDC must put in place measures to assure that the line waits already common for TSA security screening are not extended due to these proposed screening procedures. In determining physical requirements resulting

from any final adoption of this Rulemaking, CDC is urged to take into account the needs of the airport operator, aircraft operators and dignity of the travelling public.

70.11 and 71.21 Report of Death or Illness Onboard Aircraft Operated by Airlines

Based on anecdotal reports from Member Airlines, naturally-occurring deaths during flight, while not common, are most often associated with pre-existing terminal illness or cardiac arrest unrelated to communicable disease. Such occurrences are handled as medical emergencies, with arrangements made by the airline for emergency medical services (EMS) to meet the flight on arrival. Therefore, we recommend that the language of proposed sub-section s 70.11(a) and 71.21(b) be amended to read "any deaths related to a suspected communicable disease." This requirement would be more closely tailored to the CDC's goal of identifying and tracing the spread of disease. Since any death on board an aircraft would be handled by medical professionals once the plane has landed, deaths from other causes still would be reported by these responders to the appropriate local authorities.

New Section 70.11 makes the Pilot-in-Command responsible directly to the CDC for reporting the presence of any communicable disease on board a covered flight. We believe that such a requirement is not aligned with global guidance, which normally holds the Pilot-in-Command responsible for making the initial report of such occurrences to the appropriate Air Traffic Control authorities, who are then responsible for alerting first responders locally and CDC as warranted by the report. Realistically, the Pilot-in-Command should not be directly responsible for making initial notifications to CDC while maintaining control over the operation of the flight. While, on page 54245, CDC indicates their intent to provide for as much flexibility to allow for options on a carrier-by-carrier basis, the proposed regulatory language to be incorporated at Section 70.11 (b) "*the pilot in command of an aircraft operated on behalf of an airline who reports in accordance with paragraph (a) shall be deemed to satisfy the reporting obligation under 42 CFR 70.4"* does not indicate in any appreciable way that airlines may adopt alternative methods to ensure notification in made to CDC, such as through communications with Air Traffic Control personnel or via contracted Medical Services organizations that many international

Aircraft Operators employ today. We urge CDC to consider amending this Section and providing guidance on the alternative notification processes, other than direct pilot in command to CDC contacts that would be allowable under the Part.

70.19 and 71.2 Penalties

As discussed on Pages 54249-50, the current penalty that may be assessed under 42 CFR 71.2 is a fine of not more than $1,000 or imprisonment for not more than 1 year for any person violating any provision of these regulations. The Rulemaking proposes to add penalty language to Part 70 and increase the penalty described in Part 71, applying fine amounts not previously seen. Furthermore, the Rulemaking seeks to delineate between persons and organizations that are found to violate the proposed regulation.

- For persons, a penalty of between $100,000 and $250,000 per violation; and
- For organizations, a penalty of between $200,000 and $500,000 per violation

We believe the penalties language in 70.19 and 71.2 is worded too broadly, making all violations of "this part" (presumably Parts 70 and 71 in their entirety) subject to the new fines. CDC presents the new fines specifically in the context of an airline that transports a person in violation of quarantine orders but the Rulemaking is not so limited. We question CDC's intent when recommending to increase possible financial penalties that might be levied against an airline five hundred-fold in events where a death occurs, or two hundred-fold where there is no loss of life, particularly if the violation is simply failure to report an illness, comply with the 24 hour manifest order, or potentially for the inability to provide contact details as required under Section 71.4. Considering the expanded symptoms qualifying a passenger as an ill person under the new definition in 70.1 and 71.1, and the fact that this Rulemaking could now apply to both domestic and international flights, the civil penalties are far too high. We would ask that CDC provide significantly more details relating to the decisions made to justify this enormous penalty increase, and if CDC chooses to impose such high fines, at a minimum the fines should be better defined and more narrowly tailored.

71.4 Requirements relating to collection, storage and transmission of airline passenger, crew and flight information for public health purposes

Review of Section 71.4 has resulted in the greatest number of concerns, as well the need for clarification of intent. While we have already addressed some of the following issues in our General Comments, we will also include them in this section.

Provision of Contact information within 24 hours of an Order

Carriers report that they have been effectively complying with the existing requirements, but have, on occasion found it difficult to locate, extract, compile, format and transmit the available information within the allotted timeframe. In some instances, the delays have been attributed to incorrect information contained in the Order itself. For example, one carrier cited instances in which a flight number was incorrectly reported, in others the port of entry was wrong. Where data needed to track a given flight was incorrect, it caused a delay in the ability to respond in the anticipated timeframe.

While most report that they have largely been able to comply, they feel that in certain instances, mitigating circumstances may lead to increased reporting times that should be taken into consideration.

Data available upon receipt of an Order versus data already provided to DHS/CBP

The Rulemaking erroneously assumes that the transporting airline will have more or different information about its passengers on a given flight when an Order is issued following identification of a possible health risk, as compared to that data which the airline has already transmitted to the U.S. authorities through PNR and AQQ transmissions. This is in fact, incorrect. All data that the airline has will have already been provided via the DHS router and stored within CBP systems.

The Rulemaking suggests that it intends to supplement data received from airlines in response to an Order with information from CBP, including APIS and Passenger Name Record (PNR), consistent with current practices.

As indicated in our General Comments, and above, the data that airlines will have access to upon receipt of an Order is that which CBP already possesses. At issue is the fact that five (5) elements desired by CDC under the Rulemaking are not currently required by CBP under the AQQ mandate, nor are those elements always going to be collected and stored in the passenger's reservation (PNR).

Additional Mandatory Data Elements Envisaged in the Rulemaking

As already discussed in our General Comments above, the five additional data elements anticipated in this Rulemaking, and not already required (to the extent such elements are available and maintained by the airline) under the APIS Quick Query (AQQ) program include:

- Home address for US Citizens and Legal Residents
- Primary Telephone Contact
- Secondary Telephone Contact
- E-mail address
- Seat assignment or Cabin on the flight

As discussed in the Cost Evaluation section, while these data elements are included in the WCO/IATA/ICAO Guidelines for Advance Passenger Information, and accounted for in the UN/EDIFACT PAXLST message structure, they are not currently required under existing US regulation, nor are they included in CBP's Consolidated User Guide, which provides technical guidance on how airlines format and transmit AQQ manifests.

The collection and storage of the proposed five elements would require through modification of existing systems. That modification would result in message structures that CBP's own IT infrastructure is not configured to receive, increasing the possibility that messages would be corrupted and data not transferred to CBP.

No other processes exist today that would allow airlines to capture the existing API data elements envisaged in the Rulemaking, and separately capture and store these 5 additional elements. Accordingly,

in order to be able to comply with the CDC proposal outside of the existing AQQ and PNR reporting requirements adopted by CBP, airlines would be required to develop entirely independent systems solely for that purpose. Such IT development will be costly and will take a significant amount of time and resources. Furthermore, if collection of these new data elements is made mandatory, via AQQ or otherwise, there will be a significant impact on operations in terms of staffing resources and customer processing at check-in. These impacts on the industry are not recognized in the costing analysis contained in the Rulemaking, and again, will lead to inaccurate assumptions used to support CDC's arguments.

Availability of Certain Biographic Data in Airline Systems

A number of States that have adopted API reporting requirements, predominately those located within Europe, have also included restrictions in their national regulations limiting the amount of time airlines are permitted to store API data for a given flight. In many instances today, airlines operating flights to the United States from one of these origin points are legally prohibited from storing API data beyond 24 hours following the flight's termination. Based on these legal restrictions, airlines may be unable to comply with an Order due to circumstances beyond their control. Further, European carriers, in particular, are subject to stringent data privacy controls that prohibit them from transmitting data from airline reservation systems to any third country authority absent an official agreement in place. , Those restrictions also prohibit the sharing of that PNR data for any purpose other than that for which the data was originally collected, or which was negotiated in the EU PNR Agreement. We believe the U.S .agreement with the EU on the exchange of PNR data is bounded by the use of the reservation data for the purposes of controlling terrorism, transnational and other serious crime. Accordingly, we are not convinced that any data that might be stored in a passenger's reservation, including API data or other primary contact information, could legally be transmitted to CDC in response to a health alert.

71.20 Public health prevention measures to detect communicable disease

Carriers have expressed concern about the processes under which CDC might implement non-intrusive Preventative Measures in the airport environment, and ask that any such measures take into account the needs of the airport operator, aircraft operators and dignity of the travelling public.

Conclusion

We recognize the need for CDC to promptly obtain pertinent information about passengers and/or crew members who may have been exposed to contagious disease and who have arrived in the United States on international flights. Airlines operating flights to the United States have for decades responded with alacrity when CDC has requested such information from them.

While the importance of supplying passenger data in such circumstances is clear, the NPRM does not provide a demonstrable justification for adding the data collection, storage and transmission requirements proposed in it.

As we noted on page 4, the new obligations proposed in the NPRM seek largely to replicate U.S. Government-mandated data exchange system requirements already imposed on airlines flying to the United States. The NPRM does not demonstrate that those requirements are inadequate for CDC's purposes.

Moreover, the NPRM is premature. Its new data reporting requirements appear to be contingent upon modifications being made to the existing Customs and Border Protection APIS Quick Query (AQQ) program. They are not currently part of the data element set authorized under existing AQQ regulations.

CBP information systems are not configured to capture and process such elements, nor are airline systems programmed to collect, format and transmit these elements to CBP via the DHS Portal. Programming efforts by both CBP and by airlines (or their third-party reservation system providers) would be significant and costly. These programming efforts could only be initiated following development and adoption of technical requirements amending existing AQQ regulations and globally adopted message construction standards developed to support such government-imposed requirements.

Furthermore, significant impact to the airline check-in operation around the world would be experienced in order to collect these data elements, driving up staffing resources and increasing passenger processing times. Airlines and their reservation systems cannot speculate on the technical requirements of an expanded passenger-data transmission arrangement. We need precision in this area. We do not believe that CDC and CBP are near the point that they can provide such rigorous guidance, nor do we believe it appropriate for airlines and CDC to enter into alternative technical solutions in advance of final agreement between CDC and CBP, that do not take into account CBP's needs and concerns.

And finally, absent an operational agreement between CDC and CBP with respect to expectations for additional data availability, the NPRM also lacks specificity. The Rulemaking is generally clear in what airlines would be obliged (to the extent such elements are available and maintained by the airline) to provide to CDC in response to an Order, and notifications that airlines would be required to complete in the event communicable disease is suspected. However, the Rulemaking is lacking in sufficient guidance on the processes, both operational and technical, that airlines would need to develop in order to comply with those requirements. While couched in terms, such as "to ensure maximum flexibility in responding to this Rule", some issues involved in this discussion, and in particular, data capture and storage making use of API messaging structures, are by their very nature, global and deserving of discussion and development within the appropriate international forums.

Given these considerations, we suggest that the NPRM be withdrawn and that CDC and CBP collaborate, with airline participation, on any new passenger-data requirement intended to respond to identifying those who might have been exposed to a communicable disease.

Respectfully submitted,

_____

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JOINT COMMENTS OF
AIRLINES FOR AMERICA,
THE INTERNATIONAL AIR TRANSPORT ASSOCIATION,
THE REGIONAL AIRLINE ASSOCIATION, AND
THE NATIONAL AIR CARRIER ASSOCIATION

Docket CDC-2020-0013

ATTACHMENT 16

Business

Major airlines, U.S. officials clash over passenger tracking related to coronavirus cases

The impasse has dragged on despite the growing number of cases in the United States

Here are important travel tips to keep in mind if you're traveling to or through a coronavirus epicenter. (Allie Caren, Sarah Hashemi/The Washington Post)

By **Jeff Stein**, **Lena H. Sun** and **Lori Aratani**

March 2, 2020 at 5:37 p.m. EST

U.S. officials are pressuring airline executives to turn over the email addresses and phone numbers of international passengers as the Trump administration tries to track who may have been exposed to the coronavirus, according to five people briefed on the situation.

Government officials have said they need the data so they can warn local authorities about who might have been exposed to the virus. But the airline industry has balked, saying the federal government should instead share information it already collects among different agencies and come up with a system for obtaining the rest.

The impasse has dragged on for weeks despite concerns about the growing number of people with coronavirus in the United States. It has become a top issue of the Trump administration's virus task force and U.S. lawmakers. Airline executives are slated to meet with Vice President Pence on Wednesday.

The airline industry has pushed Congress to intervene, with some lobbyists asking lawmakers to insert a provision in an emergency spending package that would effectively absolve the airlines of having to track some of the data.

[Coronavirus live updates]

A failure to resolve the issue could complicate the government's efforts to contain the outbreak's spread. United Airlines, Delta Air Lines and American Airlines deferred questions to Airlines for America, a lobbying group that represents the airline industry. Airlines for America said collecting the data shouldn't be the airlines' job since the government already has much of it in existing databases. They also said it would take as long as a year for the airlines to set up a tracking system.

The battle over the data has taken on new urgency in recent days.

The Centers for Disease Control and Prevention is asking airlines to collect and — when ordered — submit data from passengers on select international flights within 24 hours in an electronic format. That data might include an email, a phone number and an address in the United States. In the event a passenger on a flight develops covid-19, the disease caused by the coronavirus, that information would enable health officials to reach others who may have been exposed, a system known as "contact tracing." On Feb. 7, the Department of Health and Human Services issued an

interim rule requiring certain passenger data to be shared with federal officials.

[Sign up for our coronavirus newsletter to stay updated on the outbreak.]

"Contact tracing is effective at reducing cases of communicable disease at the early stages of a potential outbreak if the contacts are notified as soon after initial exposure as possible," the CDC said when it announced the Feb. 7 policy. "If an efficient contact system is not in place when the first ill passengers arrive, the benefits of the contact tracing are greatly diminished."

The CDC has growing concerns about getting the information it needs for its contact tracing program, saying that under current regulations, it can take nearly two weeks to obtain the traveler data. Even then, some of the information is incomplete.

The passenger data issue has raised alarms at meetings of the U.S. coronavirus task force, according to an official at the Department of Health and Human Services, who spoke on the condition of anonymity to talk candidly about internal meetings. Ken Cuccinelli, acting deputy secretary of homeland security, also flagged the issue during internal administration meetings Saturday, according to another official familiar with the discussions.

Officials say there is greater urgency given the Trump administration's new travel restrictions affecting Iran, Italy and South Korea. With cases emerging in recent days in Washington state, Oregon, Rhode Island, Florida and New York, the federal government and the airline industry face enormous pressure to put in place a tracking system amid fears of the coronavirus's spread.

[Coronavirus recession fears grow as Wall Street investors brace for a wild week for stocks]

"When the goal is containment, timing is of the essence," said Josh Michaud, associate director for global health policy at the Kaiser Family Foundation. "The earlier you are able to find these people, get them into testing and, if needed, quarantine, the more likely you are to prevent future spreading."

In the three weeks since HHS's rule was put into effect, airlines have turned over some information, but it has been "incomplete," according to the HHS official. U.S. officials want to know who was traveling on planes that were later determined to be transporting passengers who had the coronavirus. For example, if a passenger on a flight from Italy two weeks ago tested positive for the virus last week, CDC officials want to track down fellow passengers on that flight to monitor their health and determine who else might have been exposed.

Right now, when a plane from China lands in the United States, U.S. citizens who are not sick and not showing symptoms are given instructions at the airport to monitor themselves for symptoms, such as fever, cough or difficulty breathing. After they reach their final destination, they are supposed to stay home and monitor their health for 14 days from the time they left China. If they develop symptoms, they are supposed to contact their health-care providers and their local public health authorities.

The CDC wants passenger data from the airlines so the agency can pass it on to states and counties, allowing those front-line authorities to "call in and check in on" those individuals to make sure they are not sick, the official said. CDC officials regard this basic information as critical to efforts to control the spread of the virus.

[The government can quarantine you for coronavirus, and there's almost nothing you can do about it]

The airlines have been warning the government at least since the beginning of February that they lack the capacity to quickly set up a tracking system, said Nicholas E. Calio, CEO of Airlines for America. Creating the system could take a year or longer, Calio said, and airlines often do not have the necessary passenger information available to them if flights were booked with a third party.

Most of the airlines' current systems would have to be reprogrammed to collect additional data, and the airlines contend that they have no way of verifying that the information they receive is accurate.

"We have some of the information, but we don't have all of it," said Sharon Pinkerton, senior vice president for legislative and regulatory policy at Airlines for America.

In a letter to HHS, Calio wrote that roughly 74 percent of all passengers list a phone number and 56 percent list an email address in the "passenger name record," a type of government database that tracks travelers. Calio also said that the airline industry was willing to work with the federal government to address any gaps.

Airline companies have asked Congress to require HHS to create a portal that sends passenger information to the CDC, according to a memo sent by industry lobbyists to lawmakers and described to The Washington Post.

Such a legislative measure would effectively absolve the airlines of having to track and send the information to the CDC, but it is unlikely to be approved when Congress takes up the broader emergency package this week, according to two congressional aides who spoke on the condition of anonymity to describe fast-moving negotiations. Calio said the airlines are willing to pay to develop an online database in which travelers directly provide their information to the CDC.

Lawmakers are hoping to resolve the impasse quickly. In addition to the meeting between airline executives and Pence, airline lobbyists are also expected to meet this week with members of the Senate Committee on Commerce, Science and Transportation, including Sen. Ted Cruz (R-Tex.), who chairs the panel's subcommittee on aviation and space.

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